

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

IN RE: NATIONAL : MDL NO. 2804
PRESCRIPTION OPIATE :
LITIGATION :
:

THIS DOCUMENT RELATES TO : CASE NO.
ALL CASES : 1:17-MD-2804
:
: Hon. Dan A.
: Polster

- - -

January 22, 2019

- - -

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

Videotaped deposition of ANDREW
PALMER, RPh taken pursuant to notice, was held at
the law offices of Morgan, Lewis & Bockius LLP,
1701 Market Street, Philadelphia, Pennsylvania,
beginning at 9:40 a.m., on the above date, before
Ann Marie Mitchell, a Federally Approved
Certified Realtime Reporter, Registered Diplomate
Reporter, Registered Merit Reporter and Notary
Public.

- - -

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I N D E X

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<p style="text-align: right;">Page 10</p> <p>1 Certified Questions and Answers 2 Page Line 3 110 2 4 5 BY MR. SIMMER: 6 Q. As far as you recall, however, 7 you don't recall ever that any of these 8 committees discuss a specific instance of -- 9 concerning a suspicious order. Right? 10 MR. LAVELLE: Objection to the 11 form of the question. And I also object 12 and direct the witness not to answer to 13 the extent it would disclose the 14 substance of attorney-client 15 communications. 16 THE WITNESS: Yeah. At the 17 advice of counsel, I'm not going to 18 answer that question. 19 BY MR. SIMMER: 20 Q. It was a yes or no question. I 21 didn't ask you to divulge any attorney-client 22 communications. You can answer. 23 MR. LAVELLE: Again, I direct the 24 witness not to answer. It was a yes or</p>	<p style="text-align: right;">Page 12</p> <p>1 suspicious orders that you recall, these three 2 committees? 3 MR. LAVELLE: Again, objection to 4 the extent you would have to disclose 5 attorney-client communications to answer 6 this question, which is seeking the 7 substance of discussions that occurred, 8 including the pharmacy compliance 9 committee. I direct the witness not to 10 answer the question. 11 THE WITNESS: At the advice of 12 counsel, I will not answer the question. 13 14 - - - 15 (End of certified questions and answers.) 16 - - - 17 18 19 20 21 22 23 24</p>
<p style="text-align: right;">Page 11</p> <p>1 no question seeking the substance of a 2 communication. So, yes, it does invade 3 the attorney-client privilege 4 potentially. 5 MR. SIMMER: How in the world 6 does that involve an attorney-client 7 communication? You've established no 8 predicate whatsoever for the objection. 9 You can answer. 10 MR. LAVELLE: No, you can't. 11 Direct the witness not to answer. 12 THE WITNESS: I don't even know 13 what predicate means. 14 MR. SIMMER: He hasn't even 15 established that there was any kind of 16 attorney-client communication going on 17 with regard to suspicious order 18 monitoring for these committees. 19 THE WITNESS: Yeah -- 20 MR. LAVELLE: Wait until he asks 21 a question that is directed to you. He's 22 just arguing with me. 23 BY MR. SIMMER: 24 Q. Did the committees ever deal with</p>	<p style="text-align: right;">Page 13</p> <p>1 THE VIDEOGRAPHER: We are now on 2 the record. My name is Devyn Mulholland. 3 I'm a videographer for Golkow Litigation 4 Services. Today's date is January 22, 5 2019. The time is 9:40 a.m. This video 6 deposition is being held in Philadelphia, 7 Pennsylvania, in the matter of National 8 Prescription Opiate Litigation. The 9 deponent is Andrew Palmer. Counsel will 10 be noted on the stenographic record. 11 The court reporter is Ann Marie 12 Mitchell, who will now swear in the 13 witness. 14 - - - 15 ANDREW PALMER, RPh, after having 16 been duly sworn, was examined and 17 testified as follows: 18 - - - 19 EXAMINATION 20 - - - 21 BY MR. SIMMER: 22 Q. Good morning, sir. My name is 23 Scott Simmer on behalf of the plaintiffs in this 24 case.</p>

<p style="text-align: right;">Page 14</p> <p>1 Have you ever been deposed</p> <p>2 before?</p> <p>3 A. I've done grand jury testimony</p> <p>4 before. I don't know if that's the same thing.</p> <p>5 Q. Okay. Well, let's go over some</p> <p>6 ground rules, just to make sure that we</p> <p>7 understand how we have to proceed today.</p> <p>8 I'm going to be asking a series</p> <p>9 of questions. You're going to answer. The court</p> <p>10 reporter is taking down word for word what each</p> <p>11 of us says. That's -- it's important that we</p> <p>12 don't talk over each other.</p> <p>13 A. Okay.</p> <p>14 Q. So -- and you have to answer</p> <p>15 verbally, not nodding your head.</p> <p>16 Do you understand?</p> <p>17 A. Yes.</p> <p>18 Q. Please wait before you answer to</p> <p>19 ensure I'm done before answering the question.</p> <p>20 Is that fair?</p> <p>21 A. Yes.</p> <p>22 Q. And answer fully and accurately</p> <p>23 and verbally, as I said.</p> <p>24 Do you understand?</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. What's your understanding of why</p> <p>2 you are here today?</p> <p>3 A. My understanding, I'm here to</p> <p>4 provide testimony regarding national type of</p> <p>5 litigation involving opioids.</p> <p>6 Q. Have you ever reviewed any of the</p> <p>7 pleadings in this case?</p> <p>8 A. No.</p> <p>9 Q. How did you develop your</p> <p>10 understanding of what this case is about?</p> <p>11 A. General understanding from</p> <p>12 counsel and, you know, our legal department at</p> <p>13 Rite Aid.</p> <p>14 Q. So who have you spoken to about</p> <p>15 this case?</p> <p>16 A. I've spoken to counsel.</p> <p>17 Q. And you're pointing to whom?</p> <p>18 A. To John and Kelly and other John,</p> <p>19 who is not here, and Matt.</p> <p>20 Q. You said you spoke to in-house</p> <p>21 counsel as well?</p> <p>22 A. Yes.</p> <p>23 Q. And who is that?</p> <p>24 A. Jim Comitale is our general</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Yes.</p> <p>2 Q. And if you don't understand a</p> <p>3 question, please say so and I'll attempt to</p> <p>4 rephrase. Otherwise, I'm going to assume you</p> <p>5 understand my questions. Okay?</p> <p>6 A. Yes.</p> <p>7 Q. And you understand you're going</p> <p>8 to -- you need to answer truthfully, too.</p> <p>9 Correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. You can request a break at</p> <p>12 any time. I just ask that if a question is</p> <p>13 pending, you answer before we take our break.</p> <p>14 Is that okay?</p> <p>15 A. Okay.</p> <p>16 Q. And from time to time, one of the</p> <p>17 attorneys may lodge an objection. Unless you're</p> <p>18 instructed not to answer, you do need to answer</p> <p>19 the question.</p> <p>20 A. Okay.</p> <p>21 Q. Do you understand? Okay.</p> <p>22 Is there any reason why you</p> <p>23 cannot testify truthfully and accurately today?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 17</p> <p>1 counsel. You know, this is a general topic in</p> <p>2 some of our --</p> <p>3 MR. LAVELLE: Object. Direct the</p> <p>4 witness not to disclose the substance of</p> <p>5 any communications. And I don't think</p> <p>6 counsel has asked you for that. He just</p> <p>7 asked you the names of people.</p> <p>8 THE WITNESS: There you go.</p> <p>9 BY MR. SIMMER:</p> <p>10 Q. When did you meet with them?</p> <p>11 A. I met with Kelly and Matt</p> <p>12 yesterday. And with John and John Malloy -- I</p> <p>13 can't remember when that was. Earlier than that.</p> <p>14 I believe that was last week.</p> <p>15 Q. How long have you met with</p> <p>16 counsel?</p> <p>17 A. Each meeting was probably</p> <p>18 approximately five hours.</p> <p>19 Q. Did they show you documents?</p> <p>20 A. They did.</p> <p>21 Q. And what's the approximate number</p> <p>22 of documents you looked at?</p> <p>23 A. Gosh. Maybe approximately 30.</p> <p>24 Q. And what types of documents were</p>

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1 they?
 2 A. There were some email documents,
 3 some presentations, some forms, things of that
 4 nature.
 5 Q. Okay. And you said you'd been
 6 involved in a grand jury before?
 7 A. Yes.
 8 Q. What was that about?
 9 MR. LAVELLE: Objection. Direct
 10 the witness not to answer. I think this
 11 is protected grand jury information.
 12 BY MR. SIMMER:
 13 Q. Is this a case that's still under
 14 seal, as far as you know?
 15 A. I would not know the answer to
 16 that.
 17 Q. Nothing about the grand jury --
 18 in the grand jury process has been made public
 19 that you know of?
 20 A. I don't know.
 21 Q. Was this as a witness in the
 22 grand jury you gave testimony?
 23 A. I'm not entirely sure I
 24 understand that either. I was asked to go and I

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1 went.
 2 Q. When was this?
 3 A. Approximately a year ago, I
 4 believe.
 5 Q. Where was it?
 6 A. It was in West Virginia.
 7 Q. Other than the grand jury
 8 testimony, have you given testimony in any other
 9 matter?
 10 A. No.
 11 Q. Have you been involved in
 12 litigation of any kind before?
 13 A. No.
 14 Q. In conjunction with your
 15 testimony today, did your counsel ask you to
 16 provide copy of your documents that were on your
 17 computer?
 18 MR. LAVELLE: Objection. Direct
 19 the witness not to answer to the extent
 20 it would disclose the substance of
 21 attorney-client communications.
 22 BY MR. SIMMER:
 23 Q. I asked you a yes or no question.
 24 I'm not asking for the substance.

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1 Did they ask you to provide the
 2 documents on your computer?
 3 MR. LAVELLE: Same objection.
 4 BY MR. SIMMER:
 5 Q. You can answer.
 6 A. At an earlier point I believe
 7 they did a diligence type of...
 8 Q. What types of things did they get
 9 from you?
 10 A. I believe that would be things
 11 like email.
 12 Q. Okay. Did they ask for any
 13 documents that you stored on the hard drive of
 14 your computer?
 15 MR. LAVELLE: Again, object, the
 16 witness not to answer to the extent it
 17 would disclose the substance of
 18 attorney-client communications.
 19 BY MR. SIMMER:
 20 Q. Did you provide a hard copy or
 21 documents that were stored on the hard drive of
 22 your computer?
 23 A. I don't know what -- that's a
 24 diligence IT-type process. I honestly don't

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1 know.
 2 Q. Did you provide copies of any
 3 hard copy documents you had in your possession?
 4 A. No, no.
 5 Q. So documents that you created for
 6 the company, where do you store those documents?
 7 A. Well, there's email, which would
 8 be -- you know, we use Outlook for our email, so,
 9 you know, there's your inbox or -- would be where
 10 emails would be available. You know, archive
 11 inbox, emails would be available. And then at
 12 Rite Aid we have a shared drive where documents
 13 can be available. Or your -- just your normal
 14 like -- what do they call, like a C drive.
 15 Q. Okay. The C drive is what kind
 16 of -- what documents are stored on the C drive?
 17 A. Whatever an individual puts on
 18 there. Same with the shared drive or anything
 19 else.
 20 Q. Okay. And did that -- and where
 21 you stored documents, did that change as you went
 22 through your different jobs at the company?
 23 A. Not in general, no, no.
 24 Q. So the shared drive was something

<p style="text-align: right;">Page 22</p> <p>1 that was common to all employees for Rite Aid 2 that could put documents on there? 3 A. Yes, I believe so. 4 Q. Okay. And is that all employees 5 that worked in the corporate headquarters. 6 Correct? 7 MR. LAVELLE: Object. Object to 8 form. 9 THE WITNESS: I believe all 10 employees that work in the corporate 11 headquarters would have access to a 12 shared drive. 13 BY MR. SIMMER: 14 Q. I want to go over some of your 15 background. 16 - - - 17 (Deposition Exhibit No. Rite 18 Aid-Palmer-1, Resume of Andrew Palmer, 19 Rph, CIPP-US, LPC, CCEP, was marked for 20 identification.) 21 - - - 22 BY MR. SIMMER: 23 Q. I'll hand you what we've marked 24 as Palmer Exhibit Number 1.</p>	<p style="text-align: right;">Page 24</p> <p>1 resume that you prepared and I guess then stored 2 on LinkedIn? 3 A. This is not a resume, but this is 4 a LinkedIn profile. 5 Q. Very good. 6 Can we start with your 7 educational background, if you turn to the second 8 page of this. 9 A. Uh-huh. 10 Q. It says that you went to the 11 University of Cincinnati; is that correct? 12 A. That is correct. 13 Q. And you have a BS in pharmacy 14 that you received from the University of 15 Cincinnati? 16 A. That is correct. 17 Q. Any other college education 18 beyond that? 19 A. No. 20 Q. I think you said before we got 21 started that you have an RPh? 22 A. Yes. RPh stands for registered 23 pharmacist. 24 Q. Okay. And that's -- it's simply</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Yep. 2 Q. I'll identify it for the record 3 as your resume that -- I think this is something 4 we got off of LinkedIn. 5 Would you take a little moment to 6 look at that? 7 MR. LAVELLE: While the witness 8 is reviewing, I'll just note that the 9 realtime is not working over here on this 10 side, so when we have a break, we'll need 11 to address that. 12 MR. SIMMER: Can we go off the 13 record for a moment and see if we can get 14 that up? 15 THE VIDEOGRAPHER: Off the record 16 at 9:50 a.m. 17 - - - 18 (A discussion off the record 19 occurred.) 20 - - - 21 THE VIDEOGRAPHER: We are back on 22 the record at 9:50 a.m. 23 BY MR. SIMMER: 24 Q. This appear to be the -- your</p>	<p style="text-align: right;">Page 25</p> <p>1 the licensure that you received, not an 2 indication of your degree. Right? 3 MR. LAVELLE: Object to form. 4 THE WITNESS: Yes. To be a 5 registered pharmacist, you have to be 6 licensed. 7 BY MR. SIMMER: 8 Q. Where are you licensed as a 9 pharmacist? 10 A. I hold licenses in Ohio, Kentucky 11 and Pennsylvania. 12 Q. So -- and your resume or your, 13 excuse me, your profile indicates that you 14 graduated in 1989; is that correct? 15 A. That is correct. 16 Q. What was your first job 17 post-graduation? 18 A. My first job post-graduation was 19 for a company called SuperRX. They're no longer 20 in existence. They were bought up a long, long 21 time ago. But I was a staff pharmacist for 22 SuperRX Drugs in the Cincinnati, Ohio area. 23 Q. How long did you hold that job? 24 A. I don't recall the exact time,</p>

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1 but at some point I transferred from the Ohio
2 area across the river. Cincinnati's right on the
3 river with Kentucky. I was asked to take on a
4 pharmacy manager role at a location in Kentucky,
5 across the river. So I reciprocated licensure
6 into Kentucky and opened up a new store as the
7 pharmacy manager for the Kentucky location.

8 Q. Again for SuperX?

9 A. For SuperX, yes, correct.

10 Q. Just -- can we make sure we spell
11 SuperX correctly? Could you spell it for the
12 record, please?

13 A. Yes. S-U-P-E-R-X.

14 Q. How long did you hold this
15 position as pharmacy manager?

16 A. Let's see. Well, SuperX was
17 eventually purchased by Revco. So I was the
18 pharmacy manager at that location for SuperX for
19 a period of probably a year or a little more.
20 And then Revco eventually purchased the company
21 SuperX. So then I was the same position, same
22 location, just with Revco versus SuperX. And
23 then eventually I left Revco.

24 Q. And what year did you leave

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1 Revco?

2 A. I'm trying to think. It was
3 around the time of my second kid, so -- I do know
4 what year that was. I would say 1997 or maybe
5 late 1996 I left Revco.

6 Q. And the pharmacies that you
7 worked for for SuperX and then later for Revco,
8 is it correct that those pharmacies dispensed
9 controlled substances?

10 A. That is correct.

11 Q. You say you left Revco in 1997.
12 What was your next position?

13 A. Well, 1996 or 1997, I'm not
14 100 percent certain.

15 But my next position was a staff
16 pharmacist for Rite Aid.

17 Q. Where was that?

18 A. Initially I was kind of a -- the
19 term that's frequently used in the industry is
20 floater person for Rite Aid. So I was not
21 necessarily permanently assigned to a single
22 location. It was, you know, fairly common to
23 kind of get initially hired on as a floater. And
24 then when there was a permanent opening, you

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1 would get a permanent opening.

2 So initially I worked in multiple
3 locations.

4 Q. Was there a region of the country
5 where you served as a floater?

6 A. Yes. Northern Kentucky.

7 Q. So you were still living in the
8 same location where you had been?

9 A. Yes.

10 Q. How long did you hold this
11 position as a staff pharmacist?

12 A. I was promoted to pharmacy
13 manager at a particular Rite Aid location,
14 probably about a year or a little under a year
15 after coming to work for Rite Aid.

16 Q. So what, 1998, do you think?

17 MR. LAVELLE: Object to form.

18 THE WITNESS: I think early 1998
19 is probably correct.

20 BY MR. SIMMER:

21 Q. What were your responsibilities
22 as a manager?

23 A. I was the pharmacy manager at a
24 location in Falmouth, Kentucky initially. And as

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1 a pharmacy manager, responsibilities include
2 things like, you know, scheduling your staff, you
3 know, ordering product, ensuring that
4 prescriptions are filled accurately and
5 correctly. You know, and -- you know, providing
6 patient counseling and, you know, basically just
7 ensuring quality patient care to the community
8 that you -- you're responsible for.

9 Q. I believe that Rite Aid tracks or
10 keeps track of its pharmacies with a four-digit
11 number.

12 Do you know what the four-digit
13 number was for this Falmouth, Kentucky Rite Aid
14 pharmacy that you -- where you were manager?

15 A. I do not. And it doesn't exist.
16 It hasn't existed for a long time.

17 Q. That particular pharmacy doesn't
18 exist anymore?

19 A. It was sold to CVS. All of the
20 Northern Kentucky pharmacies were sold to CVS at
21 some point in time.

22 And just to be clear, I believe
23 at least today the store numbers are actually
24 five-digit numbers.

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1 Q. Are they? Okay.
2 How long did you have that job as
3 the manager of the Falmouth, Kentucky pharmacy?

4 A. I would say a little under a
5 year.

6 Q. What was your next -- before I
7 move to that.

8 A. Uh-huh.

9 Q. Did you dispense controlled
10 substances from that pharmacy?

11 A. Yes.

12 Q. What was your next position after
13 your manager position at the Falmouth, Kentucky
14 Rite Aid pharmacy?

15 A. That's a little hard to describe,
16 because at that point in time, I was kind of
17 identified as somebody that, you know, both had
18 an interest in as well as was recognized as a
19 potential candidate for a higher-level position.
20 So I did a lot of things for the region in
21 preparation for that. So I -- at that point, I
22 still filled in more like a floater
23 pharmacist-type concept, if I was needed. But I
24 also did additional responsibilities like

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1 conducting, you know, training sessions in the
2 region, like I actually spent some time learning
3 and working as a front end store manager. And I
4 did a lot of, you know, training, regional-type
5 training. And basically activities designed to
6 prepare me for a potential district level role.

7 Q. What region was this?

8 A. This would be Kentucky, although
9 there were stores in Kentucky, Tennessee, the
10 region had some stores in Indiana. I don't
11 recall if there were a couple in Ohio, but the
12 easiest way to describe that region would be the
13 Kentucky region. That's how I would describe it.

14 Q. You said you did some training in
15 the region.

16 What kind of training was this?

17 A. I did some training on the
18 computer system. So, for instance, new
19 technicians, you know, I would teach them the
20 basics of how to, you know, do things on the --
21 on the computer.

22 I did some training on
23 nutritional supplements at one point in time.

24 And at that time we had a

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1 technician training program that was in its
2 infancy. And so I would travel throughout the
3 region and conduct technician training sessions.

4 Q. You said you also received
5 training yourself to enhance your skills; is that
6 right?

7 MR. LAVELLE: Object to form.

8 THE WITNESS: I don't believe I
9 said that.

10 BY MR. SIMMER:

11 Q. I'm sorry.

12 I think you talked about how you
13 received skills to work in the front end store;
14 is that right?

15 MR. LAVELLE: Object to form.

16 THE WITNESS: As part of my
17 development, in preparation to possibly
18 be a district manager, I spent some time
19 learning the front end of the store.

20 BY MR. SIMMER:

21 Q. During this time before you
22 became a district manager, did you receive any
23 training in the handling of controlled
24 substances?

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1 A. Not as part of that, no.

2 Q. Had you received any training
3 prior to this time in the handling of controlled
4 substances?

5 A. As a pharmacist, you know,
6 pharmacy -- what you learn in pharmacy school.

7 Q. What kind of coursework did you
8 have in pharmacy school on the handling of
9 controlled substances?

10 A. Yeah, I don't recall. That's a
11 long time ago.

12 Q. So after this position, I'm not
13 sure there was a title for it, but after this
14 position, what was your next position you had
15 with Rite Aid?

16 A. Pharmacy district manager.

17 Q. And is that what's reflected on
18 your profile on page 2, pharmacy district
19 manager, March 2000?

20 A. Yes. But I would like to
21 clarify.

22 I believe the initial title was
23 pharmacy development manager. It's always been
24 referred to as PDM, but I believe when I took the

<p style="text-align: right;">Page 34</p> <p>1 job it was called pharmacy development manager. 2 And then later on, it became pharmacy district 3 manager. But it's the same job with the same -- 4 an acronym, but just to...</p> <p>5 Q. And is the date on your profile 6 accurate, it was March 2000?</p> <p>7 A. Yes.</p> <p>8 Q. And was this in the same area 9 where you had been working already in Kentucky?</p> <p>10 A. It was, although I primarily, as 11 a pharmacy district manager, had the more eastern 12 part of Kentucky. So as pharmacy district 13 manager initially, my area was the eastern, I 14 would say third of the state.</p> <p>15 Q. And what were your 16 responsibilities as pharmacy district manager?</p> <p>17 A. So as pharmacy district manager, 18 you would be responsible for staffing your 19 stores. You would be responsible for ensuring 20 that the stores are open all of the scheduled 21 hours; for ensuring that, you know, vacations are 22 covered; for ensuring that, you know, your 23 associates are, you know, being taken care of. 24 Recruiting was a big part of the</p>	<p style="text-align: right;">Page 36</p> <p>1 arrangement are you talking about changed over 2 time?</p> <p>3 A. District level leadership at 4 retail pharmacy locations.</p> <p>5 Q. Do you mean who held the 6 positions or is it something different?</p> <p>7 MR. LAVELLE: Object to form.</p> <p>8 THE WITNESS: No. I would say 9 organizational structure.</p> <p>10 BY MR. SIMMER:</p> <p>11 Q. So the positions themselves 12 changed; is that right?</p> <p>13 A. The positions and 14 responsibilities, yes.</p> <p>15 Q. As pharmacy district manager, did 16 you have oversight responsibility for controlled 17 substances?</p> <p>18 A. I would say that the pharmacy 19 manager had oversight regarding the dispensing of 20 controlled substances in the store locations, but 21 there were certain activities that I think would 22 fall into that bucket.</p> <p>23 Q. And what were those activities?</p> <p>24 A. One example I could provide is</p>
<p style="text-align: right;">Page 35</p> <p>1 job back then. So you would work with the school 2 of pharmacy. I actually, you know, worked very 3 closely with the students, you know, at the 4 school and things like that. You would also 5 recruit existing pharmacists that were already 6 working at other locations, be responsible for, 7 you know, the overall, you know, administrative 8 aspect of running multi-unit locations.</p> <p>9 There was also a district 10 manager. So at that point in time, there was a 11 district manager and a pharmacy district manager.</p> <p>12 Q. What's the difference between the 13 two positions?</p> <p>14 A. The district manager at Rite Aid 15 at that point in time had the overall 16 responsibility for the stores. And the pharmacy 17 district manager was more specific to, you know, 18 the pharmacy piece, the recruitment piece, the 19 staffing piece, the scheduling piece. You know, 20 that arrangement, you know, sort of shifts and 21 changes throughout the years and throughout the 22 industry. But that's how it was at that point in 23 time.</p> <p>24 Q. Just to be clear, what</p>	<p style="text-align: right;">Page 37</p> <p>1 back then, we had a report, a paper report called 2 the Above Average report. And as a pharmacy 3 district manager, it would be our responsibility 4 to follow up on those and respond back.</p> <p>5 Q. What information was captured in 6 the Above Average report?</p> <p>7 A. The report, as I remember it 8 being constructed, would have like a store number 9 and a particular kind of prescription at that 10 store where, you know, the ordered amount 11 compared to -- I'm not sure how it worked exactly 12 at that time, but like the dispensed amount, you 13 know, was something that they wanted to be looked 14 into.</p> <p>15 Q. Was this true for all drugs that 16 were ordered by the stores or just a certain 17 subset of the drugs ordered by the stores?</p> <p>18 MR. LAVELLE: Object to form.</p> <p>19 THE WITNESS: Yeah, I really 20 can't answer that, cause I don't -- I 21 mean, at that point in time, I received, 22 you know, a report, and I had a job to 23 do, which was to respond back on the 24 report. So I can't 100 percent say how</p>

<p style="text-align: right;">Page 38</p> <p>1 it was constructed.</p> <p>2 BY MR. SIMMER:</p> <p>3 Q. What kind of training did you</p> <p>4 receive in order to perform your job as a</p> <p>5 pharmacy district manager?</p> <p>6 A. One of the things that they did</p> <p>7 back then was they would take a pharmacy district</p> <p>8 manager -- new pharmacy district manager and have</p> <p>9 you spend some time with an existing pharmacy</p> <p>10 district manager, or they were called pharmacy</p> <p>11 development managers at that time. So one of the</p> <p>12 things that they did training-wise is you would</p> <p>13 spend I believe about a week, like with --</p> <p>14 traveling with another experienced pharmacy</p> <p>15 development manager to learn the ropes, so to</p> <p>16 speak.</p> <p>17 At that time, they also brought</p> <p>18 you up to corporate for a few days, where</p> <p>19 different like corporate people that had</p> <p>20 knowledge of different aspects of the business</p> <p>21 would spent some time with you as well.</p> <p>22 So I would say it was a</p> <p>23 combination of some sort of corporate class-like</p> <p>24 training with what I would describe more as, you</p>	<p style="text-align: right;">Page 40</p> <p>1 A. At that point in time, no, not</p> <p>2 that I'm aware of.</p> <p>3 Q. Do you know who had that</p> <p>4 responsibility to approve threshold increases?</p> <p>5 A. No, not at that time.</p> <p>6 Q. How many pharmacies were you</p> <p>7 overseeing as pharmacy district manager?</p> <p>8 A. It varied over the course of this</p> <p>9 time frame. So I would say on the low end, 25.</p> <p>10 On the high end, maybe 45. There were some</p> <p>11 times, for instance, during that time period</p> <p>12 where -- like if there was a vacancy in a</p> <p>13 neighboring area that a different pharmacy</p> <p>14 development or district manager served, you know,</p> <p>15 they would divide it up and like the other two</p> <p>16 neighbors would cover parts of it until they</p> <p>17 hired someone in. So I think the range, I would</p> <p>18 say, is 25 to 45.</p> <p>19 Q. And just to make sure we cover</p> <p>20 that -- and maybe it was a well-defined area, but</p> <p>21 what was the approximate area or geographic area</p> <p>22 that you covered while you were a pharmacy</p> <p>23 district manager?</p> <p>24 A. So initially the approximate area</p>
<p style="text-align: right;">Page 39</p> <p>1 know, real world training done with a -- with an</p> <p>2 experienced buddy.</p> <p>3 Q. Did you receive training in how</p> <p>4 to handle controlled substances?</p> <p>5 A. I don't recall anything specific</p> <p>6 to controlled substances. Like I said, a lot of</p> <p>7 it, you know, was traveling with your experienced</p> <p>8 pharmacy development manager. So I'm sure that</p> <p>9 the things that, you know, you spent time on</p> <p>10 together probably depended a little bit on what</p> <p>11 that person had going on at that point in time.</p> <p>12 But I don't recall anything specific.</p> <p>13 Q. Is it correct that during this</p> <p>14 time period that Rite Aid had a threshold system</p> <p>15 for limiting the amount of controlled substances</p> <p>16 that pharmacies could order?</p> <p>17 MR. LAVELLE: Object to form.</p> <p>18 THE WITNESS: I don't know at</p> <p>19 that point in time if they did or did</p> <p>20 not.</p> <p>21 BY MR. SIMMER:</p> <p>22 Q. Did you have any supervisory</p> <p>23 authority over approving threshold increases for</p> <p>24 the pharmacies that you managed?</p>	<p style="text-align: right;">Page 41</p> <p>1 I covered was Eastern Kentucky. Like I said,</p> <p>2 that would be sort of the, you know, third of the</p> <p>3 state over this way. Pikeville, Prestonsburg,</p> <p>4 Paintsville, that part of the state.</p> <p>5 I still lived in Northern</p> <p>6 Kentucky, so that was not particularly convenient</p> <p>7 for me, but, you know, you have to make</p> <p>8 sacrifices to, you know -- like that to get the</p> <p>9 job.</p> <p>10 So, you know, it was always kind</p> <p>11 of an understanding that if something closer</p> <p>12 opened up, that I would be able to put in and get</p> <p>13 that. So at some point during this time frame, I</p> <p>14 went from having Eastern Kentucky to what I would</p> <p>15 describe as South Central Kentucky. So South</p> <p>16 Central Kentucky would be like Richmond,</p> <p>17 Lexington, Berea. Less eastern and more middle</p> <p>18 of the state.</p> <p>19 Q. And approximately when did you</p> <p>20 assume responsibilities for South Central</p> <p>21 Kentucky?</p> <p>22 A. I would say about the midpoint of</p> <p>23 that three-year time frame. So I'm guessing late</p> <p>24 2001, maybe early 2002. I don't recall the exact</p>

<p style="text-align: right;">Page 42</p> <p>1 point in time.</p> <p>2 Q. And did you manage those South</p> <p>3 Central Kentucky pharmacies until you left this</p> <p>4 position in April 2003?</p> <p>5 A. That's correct. At the time that</p> <p>6 I came up to corporate, I was managing the more</p> <p>7 south central area at that time.</p> <p>8 Q. The next position on your profile</p> <p>9 you state is the senior manager, third-party</p> <p>10 operations.</p> <p>11 Can you tell us what that</p> <p>12 position entailed?</p> <p>13 A. Okay. So third-party operations</p> <p>14 basically pertains to claims -- to pharmacy</p> <p>15 claims. So there's various components to that.</p> <p>16 There's processing of the claims, there's the</p> <p>17 adjudication process. There is the plan setup in</p> <p>18 order for all that to occur in the stores. And</p> <p>19 there also was a third-party call center. So</p> <p>20 those were the types of activities.</p> <p>21 Q. Do I understand it correctly that</p> <p>22 this third-party operations position was about</p> <p>23 the payment of claims?</p> <p>24 MR. LAVELLE: Object to form.</p>	<p style="text-align: right;">Page 44</p> <p>1 2010.</p> <p>2 Was this still on the corporate</p> <p>3 headquarters?</p> <p>4 A. Yes.</p> <p>5 Q. And what were your</p> <p>6 responsibilities?</p> <p>7 A. With the director of pharmacy</p> <p>8 loss prevention position, my responsibilities</p> <p>9 basically revolved around pharmacy shrink,</p> <p>10 controlling pharmacy shrink, improving pharmacy</p> <p>11 shrink, developing programs and techniques to</p> <p>12 improve.</p> <p>13 Q. And what do you mean by "pharmacy</p> <p>14 shrink"?</p> <p>15 A. Okay. "Shrink" is sort of a</p> <p>16 retail industry term that basically means a loss</p> <p>17 of inventory, a comparison of book to physical</p> <p>18 inventory, a shortage.</p> <p>19 Q. So this was a responsibility for</p> <p>20 every pharmacy that Rite Aid owned nationally?</p> <p>21 A. Yes. This was a corporate</p> <p>22 position. So this was not the kind of position</p> <p>23 that was like the pharmacy district manager role.</p> <p>24 It wasn't a specific, you know, region or part of</p>
<p style="text-align: right;">Page 43</p> <p>1 THE WITNESS: I would say it's</p> <p>2 more than that. It's also the</p> <p>3 infrastructure and support to enable</p> <p>4 those things to occur.</p> <p>5 BY MR. SIMMER:</p> <p>6 Q. The title of the position, it</p> <p>7 says here, senior manager.</p> <p>8 Were you always the senior</p> <p>9 manager of third-party operations during this</p> <p>10 time period?</p> <p>11 A. April 2003 to January 2007, yes.</p> <p>12 Q. Okay. And did you still live in</p> <p>13 Northern Kentucky at this time?</p> <p>14 A. No, no, no. This is -- this</p> <p>15 position is a corporate position. So to do this</p> <p>16 position, I had to move from Kentucky to</p> <p>17 Pennsylvania.</p> <p>18 Q. Okay. What responsibility did</p> <p>19 you have with regard to controlled substances in</p> <p>20 this position?</p> <p>21 A. Really none.</p> <p>22 Q. The next position you have on</p> <p>23 your profile is as director, pharmacy loss</p> <p>24 prevention in January 2007 and through August</p>	<p style="text-align: right;">Page 45</p> <p>1 the country. This was a corporate position.</p> <p>2 Q. How were you trained to perform</p> <p>3 your new job?</p> <p>4 A. A lot of this one was learn as</p> <p>5 you go. I did have one predecessor. This was a</p> <p>6 relatively new position. But I did have one</p> <p>7 predecessor that spent some time with me to, you</p> <p>8 know, sort of teach a little bit.</p> <p>9 There also was a senior director</p> <p>10 of, for lack of a better term, regular loss</p> <p>11 prevention, who was a very, very veteran person</p> <p>12 who also spent some time. But being a relatively</p> <p>13 new position, a lot of it was, you know, create</p> <p>14 and learn on your own.</p> <p>15 Q. So are you saying that you</p> <p>16 created the job description yourself?</p> <p>17 MR. LAVELLE: Object to form.</p> <p>18 THE WITNESS: No. As I stated</p> <p>19 before, I did have one predecessor, so</p> <p>20 the job description would have existed</p> <p>21 before I arrived.</p> <p>22 BY MR. SIMMER:</p> <p>23 Q. Did the job change when you took</p> <p>24 over?</p>

<p style="text-align: right;">Page 46</p> <p>1 A. I would think with any corporate 2 job, part of your job is to change the position. 3 So yes. I mean, I implemented programs and 4 procedures that certainly didn't exist when I 5 took the role. I think that's true of any role 6 at that sort of level. 7 Q. Who was your predecessor? 8 A. My predecessor in this role was 9 Tammy Royer. She was the first director of 10 pharmacy loss prevention. 11 Q. Could you spell her last name, 12 please? 13 A. Yes. R-O-Y-E-R. 14 Q. You said you received some 15 training from her? 16 A. Tammy sat down with me on a 17 couple of occasions and, you know, provided the 18 kind of, okay, here's your desk, here's your 19 office, here's -- here's what I do, you know, 20 today in my role. She actually had already left 21 the role for another position at that point, so 22 she was kind enough to, you know, come back and 23 spend some time with me to sort of show me the 24 ropes, so to speak.</p>	<p style="text-align: right;">Page 48</p> <p>1 as a two-page document, Bates ending 2 Rite_Aid_OMDL_0044554. And the second page is 3 cut off, so... 4 MR. LAVELLE: I'll just note for 5 the record that the copies that have been 6 marked, the Bates numbers don't appear on 7 them. It's obscured. As well as the 8 confidentiality. 9 MR. SIMMER: John, what I would 10 suggest is, as we did in the prior 11 deposition where we had this issue, we'll 12 replace this document with one with a 13 Bates numbering on it. 14 MR. LAVELLE: As long as we are 15 consulted and can agree on that, that's 16 fine. 17 MR. SIMMER: That's exactly what 18 we did last time, so we'll do the same 19 thing this time. 20 MR. LAVELLE: Okay. Very good. 21 MR. SIMMER: Is that okay? 22 MR. LAVELLE: Absolutely. Thank 23 you. 24 BY MR. SIMMER:</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. You said there was another 2 individual that handled loss prevention in 3 another part of the company that also gave you 4 training. 5 Who was that? 6 A. So Cathy Langley. And again, I 7 think in that case, you know, I would say less 8 training but, you know, certainly mentoring, 9 advising, you know. It's hard to say where 10 training and mentoring and guiding come to play. 11 But certainly Cathy was a valuable mentor. 12 Q. Let me hand you what we've marked 13 as Palmer Exhibit 2. 14 - - - 15 (Deposition Exhibit No. Rite 16 Aid-Palmer-2, Organizational Chart, 17 Corporate Loss Prevention Department 18 (9575), Bates stamped 19 Rite_Aid_OMDL_0044554, 2 pages, was 20 marked for identification.) 21 - - - 22 BY MR. SIMMER: 23 Q. Take a look at that. And while 24 you're doing that I'll identify it for the record</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. Do you recognize this document? 2 A. I do not specifically. 3 Q. In the lower left-hand corner, do 4 you see where it says "January 2010"? 5 A. I do see that. 6 Q. And you see that at the top of 7 the document, "Corporate Loss Prevention 8 Department." 9 Do you see that? 10 A. I do see that. 11 Q. Was that the department you 12 worked at? 13 A. Yes. 14 Q. And do you see right below that, 15 it says, "28 Filled Positions, 2 Open Positions, 16 3 Vendor-Paid Positions"? 17 Do you see that? 18 A. I do. 19 Q. Do you have an idea what that's 20 representing? 21 A. What this clearly represents is 22 an org chart. So -- and obviously, I recognize 23 it as an org chart. 24 Q. Okay. Do you see your name</p>

<p style="text-align: right;">Page 50</p> <p>1 over -- I guess across the middle there as the 2 Director, Pharmacy LP? 3 A. I do. 4 Q. And that's loss prevention, I 5 take it. Right? 6 MR. LAVELLE: Object to form. 7 THE WITNESS: Not everyone has an 8 LP, but I -- I believe LP would certainly 9 be loss prevention. 10 BY MR. SIMMER: 11 Q. Were you the only pharmacist that 12 worked in loss prevention at this time? 13 A. Yes. 14 Q. Is there a reason that they had a 15 pharmacist fill this position that you're aware 16 of? 17 MR. LAVELLE: Object to form. 18 THE WITNESS: I can't 19 specifically speak to why Chuck 20 specifically wanted me for this position. 21 BY MR. SIMMER: 22 Q. And you're referring to Chuck 23 Kibler? 24 A. Yes.</p>	<p style="text-align: right;">Page 52</p> <p>1 frame -- and I believe it would have been in 2 2008 -- a new process was implemented by 3 McKesson. And I was selected to be a part of 4 that process, which involved DSD McKesson 5 thresholds. So part of the time, yes. 6 Q. And what is DSD? 7 A. DSD stands for direct store 8 delivery. So DSD means suppliers that are not 9 internal. It's not -- we have our own warehouses 10 and distribution centers that provide some of the 11 products that are in the stores. The products 12 that are in the stores that do not come from that 13 internal warehousing would be products that come 14 from direct store delivery vendors. 15 Q. And what was your responsibility 16 for this new threshold system that McKesson 17 developed? 18 A. My responsibility was really to 19 serve as a contact point and liaison between the 20 stores and field and representatives at McKesson. 21 Q. And tell us exactly what you did 22 as a contact point and/or liaison. 23 A. Sure. So the way the process 24 would work is if a store had been blocked on an</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. And that was your supervisor. 2 Correct? 3 A. Yes. 4 Q. And was he your supervisor during 5 the entire time you were working in loss 6 prevention? 7 A. No. 8 Q. Who else was your supervisor 9 besides Mr. Kibler? 10 A. Bob Oberosler. 11 Q. Could you please spell his name? 12 A. Yeah. Let me... 13 O-B-E-R-O-S-L-E-R. Yes. 14 Q. So the entirety of your position 15 was dealing with shrink; is that right? 16 A. Pharmacy -- specifically pharmacy 17 shrink, pharmacy losses, that was the main focus 18 of the position. 19 Q. Did you have any responsibilities 20 for approving increases in pharmacy thresholds? 21 A. Yes. 22 Q. And what were those 23 responsibilities? 24 A. At some point during this time</p>	<p style="text-align: right;">Page 53</p> <p>1 order of a particular base code from McKesson, 2 the process was designed to where the store would 3 have to contact their pharmacy district manager. 4 And then the pharmacy district manager, after 5 evaluating the situation, if they deemed some 6 sort of an increase was needed, they were to send 7 that information, the store number, the base code 8 involved, the business reason driving a need for 9 an increase, and the percentage that they thought 10 was needed, they would send that to me. And then 11 I would also evaluate that. And if deemed 12 appropriate, I would forward those requests on to 13 the McKesson representatives. 14 Q. What were the criteria for 15 determine (sic) whether a store actually needed a 16 threshold increase? 17 A. Are you saying what are the 18 business reasons in the process I described? 19 Q. Well, you talked -- you said a 20 moment ago that the pharmacy district manager 21 would determine if they -- if he or she deemed 22 that it was -- the increase was needed. I am 23 just trying to establish what you mean by needed. 24 A. I don't think those were my exact</p>

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1 words, but let me -- I think I can still answer
2 the question, though.
3 So if a particular store was
4 blocked on a particular base code and the store
5 sends an email or calls their PDM and says, hey,
6 you know, something's wrong here, I just tried to
7 order this product and I have got a notation that
8 I can't order it, that I'm being blocked.

9 The pharmacy district manager
10 then would basically determine or gauge, okay,
11 what -- you know, why is this being blocked.
12 Hopefully they're familiar with the program. If
13 not, they would probably call out and ask.

14 And then they would, you know,
15 take a look at or inquire of the pharmacist or
16 the store, you know, okay, you know, what's --
17 what's driving this need? Did you have a, you
18 know, a recent pour over, you know, they could
19 evaluate whether, you know, there's significant
20 organic growth.

21 That's why I was talking about
22 the business reasons, part of this. There's a
23 number of different business reasons that
24 would -- would drive those things.

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1 Q. You used the term "pour over."
2 What do you mean by that?

3 A. Okay. So a pour over is kind of
4 an industry accepted term. And basically what a
5 pour over is is when an existing pharmacy closes
6 down or is going to go out of business, whether
7 it's a chain or an independent, for obvious
8 reasons, it can't just like close and shutter its
9 doors and the people that, you know, have
10 prescriptions there are basically stuck with
11 nowhere to go.

12 So what happens is those existing
13 prescriptions, those -- those files, those
14 patient records basically get acquired by another
15 pharmacy. So a pour over is where one pharmacy
16 is basically acquiring the business, the pharmacy
17 business of an existing pharmacy that is closing
18 down.

19 Q. And what are some of the things
20 that would drive significant growth in the
21 prescriptions that a pharmacy would be
22 experiencing?

23 A. There's a number of them. I
24 would say there's -- organic growth would be one

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1 example. So, for instance, when I first moved
2 into the town I grew up in, it was one square
3 mile, with a very small population. Ten years
4 later, it's gigantic with a huge -- you know,
5 much, much larger population. New businesses,
6 new providers. You know, if a new hospital opens
7 up next to the pharmacy or an existing hospital
8 now opens a cancer unit.

9 We talked about pour overs and
10 file buys. That's a -- that's certainly a big
11 one. Reasons like that.

12 Q. You mentioned another name or
13 another term, "file buy." What is that? And
14 that's B-U-Y?

15 A. It is. And actually, file buy is
16 really just another name for a pour over. I
17 shouldn't have caused confusion there, because
18 that's really the same thing. It's just -- some
19 people call it file buy, some people call it a
20 pour over.

21 Q. So a file buy, in this instance,
22 would be one pharmacy buying the business from
23 another pharmacy; is that right?

24 A. Yes. It's the same thing I

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1 described earlier.

2 Q. So in the process that you
3 outlined, if the pharmacy district manager finds
4 out that one of the pharmacies he or she is
5 managing has a need to increase its threshold,
6 the process first is that they contact that
7 pharmacy and understand what the reason is for
8 that threshold increase; is that right?

9 MR. LAVELLE: Object to form.

10 THE WITNESS: That's generally
11 correct, because they're going to have to
12 provide that reason when they respond.

13 BY MR. SIMMER:

14 Q. As part of doing that due
15 diligence to determine whether to increase the
16 threshold, do I have it right that the district
17 manager would need to go look at the dispensing
18 data from the pharmacy?

19 A. I don't think that's correct in
20 all cases, no. Certainly in some maybe, but not
21 in all cases.

22 Q. Is there any part of the process
23 along the way to get it sent up to McKesson that
24 there's an examination of the prescribing data to

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1 determine what's driving the need?

2 A. I would say dispensing data. But
3 again, not in every instance. Every instance is
4 unique. So, for example, if one of our locations
5 was broken into at night and a significant
6 quantity of the drugs were stolen in a nighttime
7 break-in, I don't -- and they were getting
8 blocked by McKesson on getting product in to take
9 care of their customers, I don't know in that
10 case as an example there would be a need to, you
11 know, necessarily dive into prescriber data, as
12 you described it. You know what happened that's
13 driving the increase.

14 Q. So for the pharmacy district
15 manager then to come to you and say that one of
16 my pharmacies needs an increase, is that all
17 handled via email or is there some other way that
18 that request is handled?

19 MR. LAVELLE: Object to form.

20 THE WITNESS: Email is generally
21 how that was handled, yes.

22 BY MR. SIMMER:

23 Q. And once you get that information
24 from a pharmacy district manager -- strike that.

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1 Once you got that information
2 from a district manager, pharmacy district
3 manager, what did you then do to examine that
4 request?

5 A. As we stated before, every
6 situation is unique. So it's going to depend on
7 each situation, but I can give you examples.

8 So I might call the pharmacy
9 district manager if there -- what they put on
10 email isn't enough information, reach out to the
11 pharmacy district manager and say, okay, you put
12 down, you know, business increase or something a
13 little more ambiguous. I might call and say,
14 okay, can you give me more information.

15 You know, I might go to sources
16 of data information. So, for example, if the
17 pharmacy district manager indicated that their
18 overall book of business was increasing by a
19 certain amount, I could go into the system and
20 see or not see that in fact, you know, they were
21 up or down approximately that amount.

22 If their indication was that
23 there had been a break-in or a burglary,
24 certainly working in loss prevention I could

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1 confirm if that was in fact true, if there had
2 been a break-in.

3 And similarly, if they indicated
4 that there was a pour over, I could confirm that
5 there was in fact a recent pour over or not,
6 so -- but it varied situation by situation.

7 Q. What were the sources of data
8 that you referred to?

9 A. Well, in the example I gave you,
10 the source of data would be like their script
11 count, sales data, script count.

12 Q. What is the name of the database
13 where that sales data is housed?

14 MR. LAVELLE: Object to form.

15 THE WITNESS: So we have a
16 mainframe system, so I don't want to try
17 and get too techy here, but we sort of
18 have a proprietary mainframe system.
19 There's different ways that you can
20 access the data in that system. Today,
21 for example, most of that access is
22 through portal applications. If you go
23 back to like my third-party days, most of
24 that would have been through what we

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1 called green screen applications.

2 But at the end of the day, you
3 know, there's a proprietary mainframe
4 system. And there's different ways that
5 you can access data within that system.

6 BY MR. SIMMER:

7 Q. Now, your first position I think
8 we established was as a director of pharmacy loss
9 prevention.

10 And that was until August 2010;
11 is that correct?

12 MR. LAVELLE: Object to form.

13 THE WITNESS: That's correct.

14 BY MR. SIMMER:

15 Q. And what was your next position
16 after that?

17 A. My next position was senior
18 director, pharmacy loss prevention.

19 Q. Were your duties different than
20 your former position?

21 A. Not substantively, no.

22 Q. This was a promotion. Correct?

23 A. It was.

24 Q. And did you take on additional

<p style="text-align: right;">Page 62</p> <p>1 responsibilities?</p> <p>2 A. Not substantively.</p> <p>3 Q. Did you receive any different</p> <p>4 training in order to perform your position as a</p> <p>5 senior director, pharmacy loss provision --</p> <p>6 excuse me, prevention?</p> <p>7 A. No.</p> <p>8 Q. I think you said your supervisor</p> <p>9 had been Mr. Kibler.</p> <p>10 Did the supervisor change at some</p> <p>11 point in time while you were a senior director?</p> <p>12 A. I can't -- Bob O came to the</p> <p>13 organization right around that time frame. I</p> <p>14 honestly can't remember whether it was Chuck or</p> <p>15 Bob that was there at that time. It was close.</p> <p>16 Q. Bob O is Bob Oberosler?</p> <p>17 A. Yes. He frequently goes by Bob</p> <p>18 O.</p> <p>19 Q. Just so we have an accurate</p> <p>20 spelling, can you spell his last name, please?</p> <p>21 A. I believe I already did. I can</p> <p>22 spell it again, though.</p> <p>23 Q. Yes, you could, please.</p> <p>24 A. Okay.</p>	<p style="text-align: right;">Page 64</p> <p>1 MR. LAVELLE: Object to form.</p> <p>2 THE WITNESS: To some degree.</p> <p>3 For instance, we -- we have a controlled</p> <p>4 substance checklist that we utilize in</p> <p>5 stores and in the field. And, you know,</p> <p>6 certainly as a -- the pharmacist, or one</p> <p>7 of them in the department, when revisions</p> <p>8 to that checklist were done, they would</p> <p>9 consult me as a subject matter expert,</p> <p>10 for example, to help.</p> <p>11 The checklist I believe was</p> <p>12 already in existence when I got there,</p> <p>13 but to help improve and enhance it.</p> <p>14 BY MR. SIMMER:</p> <p>15 Q. And what part of that checklist</p> <p>16 had to do with controlled substances?</p> <p>17 A. Well, the whole -- really the</p> <p>18 whole checklist. It's a -- it's a controlled</p> <p>19 substance DEA checklist.</p> <p>20 Q. And that was the title of the</p> <p>21 document, a controlled substance checklist?</p> <p>22 A. I wouldn't want to speak to the</p> <p>23 exact phrasing of the title without it being in</p> <p>24 front of me, but substantively, that's correct.</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. I don't recall that you did.</p> <p>2 A. Okay. O-B-E-R-O-S-L-E-R.</p> <p>3 Q. And you held that position as</p> <p>4 senior director until April 2011. Correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And what was your next position</p> <p>7 after that?</p> <p>8 A. My next position was vice</p> <p>9 president, compliance monitoring and privacy</p> <p>10 officer.</p> <p>11 Q. And what were your</p> <p>12 responsibilities?</p> <p>13 A. Probably the biggest</p> <p>14 responsibility was to serve as the HIPAA privacy</p> <p>15 officer for Rite Aid. Some additional</p> <p>16 responsibilities were to serve as the USA Patriot</p> <p>17 Act compliance officer for Rite Aid. And then</p> <p>18 the third areas of responsibility was around some</p> <p>19 regulatory compliance monitoring, including</p> <p>20 involvement in our store-level compliance</p> <p>21 program.</p> <p>22 Q. Did you have any responsibility</p> <p>23 for controlled substances and controlled</p> <p>24 substances monitoring in this position?</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. How was this checklist used?</p> <p>2 A. So at Rite Aid, there's a couple</p> <p>3 of different ways in which -- and this isn't the</p> <p>4 only checklist. We have some other checklists.</p> <p>5 This is the one that relates to controlled</p> <p>6 substances, which is what you asked about.</p> <p>7 So the way this would be used is</p> <p>8 we have a controlled self-assessment program out</p> <p>9 in the stores, where pharmacy managers would</p> <p>10 complete this checklist. And then we also ask</p> <p>11 our field leaders to periodically complete this</p> <p>12 checklist on their stores. And then also our own</p> <p>13 compliance team would complete these checklists</p> <p>14 on a periodic basis as well. We refer to that as</p> <p>15 three lines of defense.</p> <p>16 First line of defense being the</p> <p>17 store's self-assessment. Second line of defense</p> <p>18 being the field leaders conducting an assessment</p> <p>19 of their stores. And the third line being the</p> <p>20 independent compliance folks conducting those</p> <p>21 assessments.</p> <p>22 Q. In this new position as a VP</p> <p>23 compliance monitoring, you have responsibilities</p> <p>24 for that controlled substances checklist.</p>

<p style="text-align: right;">Page 66</p> <p>1 Correct?</p> <p>2 MR. LAVELLE: Object to form.</p> <p>3 THE WITNESS: I wouldn't say</p> <p>4 responsibilities for the checklist.</p> <p>5 So -- and the individuals who conducted</p> <p>6 those checklists at that point in time</p> <p>7 didn't report directly to me. I would</p> <p>8 say I served as the department's sort of</p> <p>9 a -- you know, a -- a pharmacist that</p> <p>10 could help with questions around the</p> <p>11 checklist, help in developing the</p> <p>12 checklist, improving the checklist,</p> <p>13 things of that nature, subject matter</p> <p>14 guide.</p> <p>15 BY MR. SIMMER:</p> <p>16 Q. What did you draw upon in order</p> <p>17 to perform your responsibilities as a subject</p> <p>18 matter guide with regard to this controlled</p> <p>19 substance checklist?</p> <p>20 MR. LAVELLE: Object to form.</p> <p>21 THE WITNESS: Internal knowledge,</p> <p>22 experience. Sometimes I might have to</p> <p>23 consult a reference or a more</p> <p>24 knowledgeable subject matter expert, if I</p>	<p style="text-align: right;">Page 68</p> <p>1 at 10:48 a.m.</p> <p>2 - - -</p> <p>3 (A recess was taken from</p> <p>4 10:48 a.m. to 11:09 a.m.)</p> <p>5 - - -</p> <p>6 THE VIDEOGRAPHER: We're back on</p> <p>7 the record at 11:09 a.m.</p> <p>8 MR. LAVELLE: Just note on the</p> <p>9 record that counsel had an opportunity to</p> <p>10 confer off the record. We understand</p> <p>11 that there was a production issue with</p> <p>12 the documents that plaintiffs intend to</p> <p>13 use as exhibits. And I think our</p> <p>14 agreement is that we'll just note the</p> <p>15 Bates numbers on the record. I'm going</p> <p>16 to have a standing objection to all of</p> <p>17 them, but we will eventually confer and</p> <p>18 substitute in as the ones that will be</p> <p>19 bound with the original of the</p> <p>20 transcript, documents that we agree are</p> <p>21 fully as they were originally produced,</p> <p>22 including Bates numbers and</p> <p>23 confidentiality; is that correct?</p> <p>24 MR. SIMMER: That's correct.</p>
<p style="text-align: right;">Page 67</p> <p>1 was looking at the checklist and had a</p> <p>2 question. But, you know, sort of a</p> <p>3 combination of those -- those things.</p> <p>4 And there were certainly other</p> <p>5 individuals that also helped in that</p> <p>6 process.</p> <p>7 BY MR. SIMMER:</p> <p>8 Q. And who are they?</p> <p>9 A. I would say the -- one of the</p> <p>10 main ones would be Janet Hart.</p> <p>11 Q. And what was her role?</p> <p>12 A. Janet Hart works in our</p> <p>13 government affairs. I think today it's called</p> <p>14 regulatory affairs department.</p> <p>15 Q. Am I correct her last name is</p> <p>16 spelled H-A-R-T?</p> <p>17 A. You are correct.</p> <p>18 MR. LAVELLE: Counsel, we've been</p> <p>19 going for over an hour. When we get to a</p> <p>20 convenient place, can we take a break?</p> <p>21 MR. SIMMER: This would be a good</p> <p>22 time.</p> <p>23 MR. LAVELLE: Thank you.</p> <p>24 THE VIDEOGRAPHER: Off the record</p>	<p style="text-align: right;">Page 69</p> <p>1 And you're going to have that as</p> <p>2 a standing objection; is that right,</p> <p>3 John?</p> <p>4 MR. LAVELLE: Yes. Thank you,</p> <p>5 Mr. Simmer.</p> <p>6 BY MR. SIMMER:</p> <p>7 Q. Before our break, sir, you talked</p> <p>8 about the fact that the pharmacy district</p> <p>9 managers reviewed the Above Average log; is that</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 Q. And that's one of the things that</p> <p>13 you did as a pharmacy district manager. Right?</p> <p>14 A. At that point in time, yes.</p> <p>15 Q. And how often did you review that</p> <p>16 Above Average log?</p> <p>17 A. That was a monthly report.</p> <p>18 Q. So that's a monthly report after</p> <p>19 the fact.</p> <p>20 In other words, the prescriptions</p> <p>21 have already been filled. Right?</p> <p>22 MR. LAVELLE: Object to form.</p> <p>23 THE WITNESS: That was a monthly</p> <p>24 report at that -- at that time, that was</p>

<p style="text-align: right;">Page 70</p> <p>1 a monthly report after the prescriptions 2 were filled. 3 BY MR. SIMMER: 4 Q. Okay. And you said you did 5 follow-up after you looked at the log; is that 6 correct? 7 A. The report, yes. 8 Q. And what kind of follow-up did 9 you do with pharmacies about the Above Average 10 log? 11 A. As a pharmacy district manager, I 12 would confirm what quantity was on hand at the 13 pharmacy in order to determine if any product was 14 missing. 15 Q. So you're simply looking for 16 shrinkage; is that right? 17 A. You're looking for loss, yes. 18 Q. Nothing further in terms of your 19 review of the Above Average log other than 20 looking for missing stock; is that right? 21 MR. LAVELLE: Object to form. 22 THE WITNESS: That's correct. 23 BY MR. SIMMER: 24 Q. Also before our break you talked</p>	<p style="text-align: right;">Page 72</p> <p>1 was it used. It's not used for anything. 2 Q. What is IIA? 3 A. The International -- Internal -- 4 Association of Internal Auditors or the Internal 5 Audit Association. 6 Q. So I'm just trying to understand. 7 These lines of defense you're 8 talking about, did it have anything to do with 9 monitoring controlled substances? 10 A. As described previously, we 11 applied that concept to our controlled substance 12 reviews. 13 Q. I think you testified earlier 14 that the stores themselves were the first line of 15 defense. Right? 16 A. The controlled self-assessments, 17 yes. 18 Q. That wasn't my question. 19 My question was whether the 20 stores were themselves the first line of defense. 21 MR. LAVELLE: Object to form. 22 THE WITNESS: The stores do the 23 controlled self-assessments, so yes. 24 BY MR. SIMMER:</p>
<p style="text-align: right;">Page 71</p> <p>1 about what you called at Rite Aid the three lines 2 of defense. 3 Do you remember that? 4 A. Yes. 5 Q. And that has to do with I think 6 also suspicious order monitoring is correct. 7 Right? 8 MR. LAVELLE: Object to form. 9 THE WITNESS: Yeah, I'm not sure 10 I understand. 11 BY MR. SIMMER: 12 Q. So what are the lines of defense 13 that are actually protecting here? 14 MR. LAVELLE: Object to form. 15 THE WITNESS: Three lines of 16 defense is an IIA concept that we 17 integrated specifically into specific 18 things like the control -- like the 19 review process. 20 BY MR. SIMMER: 21 Q. Was it also to monitor controlled 22 substances? 23 A. Again, the three lines of defense 24 is an IIA concept. I'm not sure what you mean by</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Okay. So you -- the second time 2 now you've changed my question. 3 So you're saying the 4 self-assessment is the first line of defense. 5 Right? 6 MR. LAVELLE: Object to form. 7 THE WITNESS: That the stores -- 8 that the stores perform. 9 BY MR. SIMMER: 10 Q. Is there any other things that 11 the stores themselves are doing that you would 12 deem to be a first line of defense? 13 A. I can't, you know, apply a 14 concept like that to other -- other things, as 15 you're asking. 16 Q. Was this first line of defense 17 for the stores in place back when you were 18 pharmacy district manager? 19 A. No. 20 Q. When did it go into place? 21 A. I don't recall exactly. 22 Q. So back when we were looking at 23 your resume, Exhibit 1, we had talked about 24 your -- the position you held as vice president</p>

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1 of compliance monitoring, privacy officer.
 2 It's right that you held that
 3 position until February of last year. Right?
 4 MR. LAVELLE: Object to form.
 5 THE WITNESS: That's correct. I
 6 would like to clarify, you keep referring
 7 to this as my resume. This is not my
 8 resume.
 9 BY MR. SIMMER:
 10 Q. I apologize. You did refer to it
 11 as a profile.
 12 Your profile says that that was a
 13 position you held until February of last year.
 14 Right?
 15 A. Yes.
 16 Q. And what was your next position?
 17 A. My next position was the group
 18 vice president, compliance, privacy and internal
 19 assurance services.
 20 Q. And did you have different duties
 21 in this position?
 22 A. Yes.
 23 Q. And could you describe what your
 24 responsibilities are?

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1 A. My responsibilities in this role
 2 are oversight of compliance, privacy and internal
 3 assurance services activities.
 4 Q. So oversight of compliance, what
 5 is that?
 6 A. In this role, I serve as the
 7 chief compliance person at Rite Aid Corporation,
 8 so oversight of the compliance program.
 9 Q. Who do you report to?
 10 A. I report to general counsel.
 11 Q. You also said you had privacy
 12 responsibilities.
 13 What are those?
 14 A. The privacy responsibilities are
 15 the privacy officer, you know, the HIPAA privacy
 16 officer. That's actually -- that one carried
 17 over from the other role. I was the privacy
 18 officer before and after.
 19 Q. And you also say that you have
 20 responsibility for internal assurance. Correct?
 21 A. Correct.
 22 Q. And what did that involve?
 23 A. Internal assurance services
 24 involves internal audit. And we have a fraud and

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1 ethics component as well.
 2 Q. And this is a position you hold
 3 today. Correct?
 4 A. That is the position I hold
 5 today.
 6 Q. And you're still working for Rite
 7 Aid Corporation?
 8 A. I work for Rite Aid Headquarters
 9 Corporation, not Rite Aid Corporation.
 10 Q. Okay. Then with that correction,
 11 you still are working for Rite Aid Headquarters
 12 Corporation?
 13 A. Yes.
 14 Q. On the left-hand column of your
 15 profile, it talks about different certifications
 16 that you hold.
 17 Do you see that?
 18 A. Yes.
 19 Q. Can you tell us what the CIIP/US
 20 is?
 21 MR. LAVELLE: Object to form.
 22 THE WITNESS: Yes.
 23 BY MR. SIMMER:
 24 Q. What is that?

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1 A. CIPP-US stands for Certified
 2 Information Privacy Professional United States.
 3 Q. And what organization did you
 4 receive that certification from?
 5 A. That is the IAPP, International
 6 Association of Privacy Professionals.
 7 Q. And this -- when you list it as a
 8 certification, that's an actual certification
 9 you've received from that organization. Correct?
 10 A. Yes.
 11 Q. Did you take an examination in
 12 order to receive that certification?
 13 A. Yes.
 14 Q. And what was involved in taking
 15 that examination?
 16 A. You mean like how did I take the
 17 examination?
 18 Q. Did you have to take coursework?
 19 Did you -- you know, just trying to understand
 20 what it took to take that examination, to prepare
 21 for it.
 22 MR. LAVELLE: Object to form.
 23 THE WITNESS: Okay. The -- for
 24 the certification, it's self-preparatory.

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1 So, for example, you can get books to
2 study for the examination. You can take
3 practice tests to prepare for the
4 examination. And then you have to go
5 take the test.

6 BY MR. SIMMER:

7 Q. Did any part of this CIPP-US
8 involve controlled substances?

9 A. No.

10 Q. The second certification you list
11 here is CCEP.

12 Do you see that?

13 A. Yes.

14 Q. And what organization did you
15 receive that certification from?

16 A. The SCCE, Society for Corporate
17 Compliance and Ethics.

18 Q. And when did you receive this
19 CCEP certification?

20 A. I don't recall exactly.

21 Q. Can you describe what this
22 certification is?

23 A. CCEP stands for Certified
24 Compliance and Ethics Professional.

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1 Q. Similar to the prior
2 certification we just talked about a moment ago,
3 was there an exam you had to take in order to get
4 this certification?

5 A. Yes.

6 Q. And you had to go through a
7 period of self-study before you took the exam?

8 A. Yes. And with this one, I
9 attended a preparatory session as -- as well,
10 where the exam was given at the end of it.

11 Q. When did you get this
12 certification?

13 A. I don't recall.

14 Q. Now, but I think you'd agree that
15 the corporation's compliance function could help
16 mitigate compliance-related risk for the
17 corporation. Right?

18 MR. LAVELLE: Object to form.

19 THE WITNESS: It could.

20 BY MR. SIMMER:

21 Q. In fact, we looked at the
22 society's website, and they say that this CCEP
23 professional is someone with knowledge of
24 relevant regulations and expertise in compliance

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1 processes.

2 Is that an accurate statement?

3 MR. LAVELLE: Object to form.

4 THE WITNESS: Can you repeat
5 that?

6 BY MR. SIMMER:

7 Q. We looked at the society's
8 website and they describe this CCEP certification
9 and the persons who receive it as being people
10 who have knowledge of relevant regulations and
11 expertise in compliance processes.

12 Is that accurate?

13 MR. LAVELLE: Object to form.

14 THE WITNESS: I think with
15 regards to compliance processes, yes.

16 BY MR. SIMMER:

17 Q. So you wouldn't say that the
18 knowledge of relevant regulations is something
19 that's included in the CCEP certification you
20 received?

21 A. I'm not sure how they can say
22 that when it comes to the fact that there's, you
23 know, CCEPs in hundreds of different industries.
24 It's more general compliance, like they said,

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1 processes.

2 Q. So as part of receiving this
3 certification, you didn't receive any specific
4 training in relevant regulations to the pharmacy
5 industry; is that right?

6 A. No. Well, I'm sorry.

7 The way you phrased the answer
8 to -- can you repeat the question? Because I'm
9 not -- just rephrase it for me, so I make sure
10 I've got that right.

11 I said no, but I think it's yes.

12 Q. So as part of receiving this
13 certification, you didn't receive any specific
14 training in relevant regulations to the pharmacy
15 industry; is that right?

16 A. That is correct.

17 Q. Also in the society's website
18 they describe this certification as giving the
19 person skills sufficient to assist the
20 organization in understanding and addressing
21 legal obligations; is that correct?

22 MR. LAVELLE: Object to form.

23 THE WITNESS: You're asking me to
24 speak towards what they're saying?

<p style="text-align: right;">Page 82</p> <p>1 BY MR. SIMMER: 2 Q. Yes, sir. 3 A. There was no legal component. 4 I'm not an attorney. They're not attorneys. So 5 I don't know that I agree with that. 6 Q. So this certification you 7 received did not give you training in terms of 8 the legal obligations that a company has; is that 9 correct? 10 A. Not specifically -- no, not 11 specifically obligations. 12 Q. They also describe this 13 certification as giving the individual the skills 14 of promoting organizational integrity through the 15 operation of effective compliance programs. 16 Is that a correct statement in 17 terms of your understanding of this 18 certification? 19 MR. LAVELLE: Object to form. 20 THE WITNESS: I would agree with 21 that one. 22 BY MR. SIMMER: 23 Q. Now, then, as a compliance 24 professional, it's fair to say, isn't it, that</p>	<p style="text-align: right;">Page 84</p> <p>1 A. I don't know what they did or did 2 not want to hear. However, as a compliance 3 officer, certainly I've had to provide my opinion 4 to the business where that may or may not be the 5 position the business would agree with. 6 Q. Sometimes those opinions means 7 the company would lose money; isn't that correct? 8 A. I think that's somewhat 9 speculative as well. I don't -- you're asking to 10 predict the future with regards to, say, 11 something that did not occur. 12 Q. So when you're giving your 13 opinions to the individuals at Rite Aid about 14 compliance, it's your testimony that that would 15 not result sometimes in them losing money that 16 they otherwise would make? 17 MR. LAVELLE: Object to form. 18 THE WITNESS: I think -- I think 19 the keyword is "sometimes," probably 20 sometimes. 21 BY MR. SIMMER: 22 Q. Tell the jury if you ever told 23 Rite Aid something that it didn't necessarily 24 want to hear about compliance.</p>
<p style="text-align: right;">Page 83</p> <p>1 sometimes you have to tell Rite Aid things they 2 don't want to hear? 3 MR. LAVELLE: Object to form. 4 THE WITNESS: Compliance officers 5 sometimes have to tell the organizations 6 they're employed by things they don't 7 want to hear. 8 BY MR. SIMMER: 9 Q. Not just generally compliance 10 officers, you yourself as a compliance 11 professional have had to tell Rite Aid things 12 they did not want to hear. Right? 13 MR. LAVELLE: Object to form. 14 THE WITNESS: I don't know. Rite 15 Aid is not a person, so I don't know how 16 you could say things that Rite Aid does 17 not want to hear. That appears 18 speculative. 19 BY MR. SIMMER: 20 Q. Fair point. 21 So have there been times when you 22 as a compliance professional had to tell others 23 working at Rite Aid things they didn't want to 24 hear?</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Again, the way you're phrasing 2 the question, to tell Rite Aid something they did 3 not want to hear? Rite Aid is not a person. And 4 I don't know -- that would be like me asking you 5 what you do or do not want to hear. I don't know 6 what you do or do not want to hear. 7 Q. Well, let me rephrase the 8 question. 9 Tell the jury if you ever told 10 individuals at Rite Aid as -- when you were in 11 your position as a compliance professional, have 12 you ever told individuals at Rite Aid something 13 that they didn't want to hear about compliance? 14 MR. LAVELLE: Object to form. 15 Direct the witness not to answer to the 16 extent it would disclose attorney-client 17 communications. 18 BY MR. SIMMER: 19 Q. You can answer. 20 A. At the advice of counsel, I 21 choose not to answer. 22 Q. So you're saying everything you 23 did as -- in your position in compliance is 24 always protected by attorney-client privilege.</p>

<p style="text-align: right;">Page 86</p> <p>1 Is that your position?</p> <p>2 A. No.</p> <p>3 Q. For example, on your position in</p> <p>4 loss prevention, did you report to the general</p> <p>5 counsel then?</p> <p>6 A. No.</p> <p>7 Q. So were there situations when</p> <p>8 you're working in loss prevention that you told</p> <p>9 individuals something they didn't want to hear</p> <p>10 about compliance?</p> <p>11 MR. LAVELLE: Object to form.</p> <p>12 THE WITNESS: Again, if we could</p> <p>13 not use the "did" or "did not want to</p> <p>14 hear."</p> <p>15 But what I will say is, you know,</p> <p>16 in various roles at Rite Aid, being</p> <p>17 risk-minded and compliance-minded,</p> <p>18 whether it be privacy or anything else,</p> <p>19 sometimes the business has an idea or an</p> <p>20 initiative, and in various roles I have</p> <p>21 had, I would provide them advice or</p> <p>22 guidance or my opinion that there are</p> <p>23 risks associated with those initiatives</p> <p>24 as it relates to compliance. I think</p>	<p style="text-align: right;">Page 88</p> <p>1 increase process as a compliance professional.</p> <p>2 Right?</p> <p>3 MR. LAVELLE: Object to form.</p> <p>4 THE WITNESS: As the director of</p> <p>5 pharmacy loss prevention, yes.</p> <p>6 BY MR. SIMMER:</p> <p>7 Q. And there were times when you had</p> <p>8 to tell pharmacies they couldn't receive a</p> <p>9 particular increase that they were requesting</p> <p>10 from McKesson. Right?</p> <p>11 MR. LAVELLE: Object to form.</p> <p>12 THE WITNESS: I did not</p> <p>13 communicate directly with the pharmacies.</p> <p>14 BY MR. SIMMER:</p> <p>15 Q. So who did you communicate with?</p> <p>16 A. The pharmacy district managers</p> <p>17 and representatives at McKesson.</p> <p>18 Q. So there were times when you had</p> <p>19 to communicate to those individuals that they</p> <p>20 could not receive threshold increases from</p> <p>21 McKesson. Correct?</p> <p>22 A. There were times where either I</p> <p>23 had to deny a request or ask for further</p> <p>24 clarification, yes.</p>
<p style="text-align: right;">Page 87</p> <p>1 that's what you're asking.</p> <p>2 BY MR. SIMMER:</p> <p>3 Q. So it's your testimony that what</p> <p>4 you did in your lo -- role on loss prevention was</p> <p>5 to identify risks for the company. Correct?</p> <p>6 A. That's part of -- part of, you</p> <p>7 know, a role or the roles that I've played with</p> <p>8 the company. Correct.</p> <p>9 Q. Is that also true in the</p> <p>10 positions you've held after you left the loss</p> <p>11 prevention department?</p> <p>12 MR. LAVELLE: Object to form.</p> <p>13 THE WITNESS: That is -- that is</p> <p>14 correct.</p> <p>15 BY MR. SIMMER:</p> <p>16 Q. So in loss prevention, for</p> <p>17 example, you had to look at drug threshold</p> <p>18 increases, didn't you?</p> <p>19 A. To clarify, I was involved in the</p> <p>20 McKesson threshold increase process. I would not</p> <p>21 say drug threshold process.</p> <p>22 Q. Thank you for that correction.</p> <p>23 So -- but is it correct then that</p> <p>24 you were involved in the McKesson threshold</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. So tell us what instances you</p> <p>2 denied the threshold increase request?</p> <p>3 A. I don't recall specific instances</p> <p>4 at specific store locations.</p> <p>5 Q. How many times would you say</p> <p>6 during your years working in loss prevention that</p> <p>7 you actually denied a threshold increase request?</p> <p>8 A. I don't recall how many times.</p> <p>9 Q. 100?</p> <p>10 A. No.</p> <p>11 Q. 50?</p> <p>12 A. Again, I don't recall, you know,</p> <p>13 how many times, you know, I would have not</p> <p>14 forwarded a request on to McKesson from a</p> <p>15 pharmacy district manager.</p> <p>16 Q. But you're comfortable in</p> <p>17 testifying that you did at least on occasion deny</p> <p>18 a request. Right?</p> <p>19 A. I am comfortable.</p> <p>20 Q. And what are the reasons that you</p> <p>21 denied those requests?</p> <p>22 A. One example would be the</p> <p>23 threshold amount being requested appeared</p> <p>24 unreasonable. And after further discussion with</p>

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1 the pharmacy district manager, they agreed that
 2 the request was not the right percentage, for
 3 example.
 4 Q. In that kind of instance, would
 5 you lower the percentage instead of denying it
 6 outright?
 7 MR. LAVELLE: Object to form.
 8 THE WITNESS: Again, I'm not
 9 denying the request. In an instant like
 10 that, I would probably call the pharmacy
 11 district manager. We would have the
 12 discussion. At that point in time, the
 13 pharmacy district manager may, you know,
 14 withdraw the request or more likely would
 15 send a new email with a different, more
 16 reasonable amount.
 17 BY MR. SIMMER:
 18 Q. And there were times as well that
 19 you approved these increases. Isn't that
 20 correct?
 21 A. There were times when I forwarded
 22 these requests to McKesson. Only McKesson can
 23 approve the increases. But yes, there were times
 24 I forwarded the requests from the district

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1 manager on to McKesson for approval.
 2 Q. Now, in your job in loss
 3 prevention, were you identifying risks to the
 4 company as well at that point?
 5 A. It is my belief that every
 6 employee should be identifying risks to the
 7 company.
 8 Q. So when you received threshold
 9 requests from the pharmacy district managers, you
 10 were analyzing those for potential risks to the
 11 company. Isn't that fair?
 12 A. I don't know that that's
 13 accurate. At least not in every instance, no.
 14 Q. So there are instances where you
 15 didn't look at it for potential risks to the
 16 company?
 17 A. Yeah. I'm not sure I really
 18 understand the question.
 19 Q. Well, you just said a moment ago
 20 that everything every employee does at Rite Aid
 21 is looking at potential risks to the company.
 22 Right?
 23 MR. LAVELLE: Object to form.
 24 THE WITNESS: They should.

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1 BY MR. SIMMER:
 2 Q. And so I'm simply asking, in
 3 those instances where you were looking at
 4 threshold increase requests that were sent to you
 5 by the pharmacy district manager, did you in
 6 every instance look at those with an eye toward
 7 potential risks to the company?
 8 MR. LAVELLE: Object to form.
 9 THE WITNESS: No. Because in
 10 some instances, the pharmacy district
 11 manager simply misunderstood the process.
 12 BY MR. SIMMER:
 13 Q. And that did not involve an
 14 assessment by you of potential risks to the
 15 company?
 16 A. Would I conduct a risk assessment
 17 on every single request that was made? No.
 18 Q. So if the pharmacy district
 19 manager simply didn't understand the process,
 20 what would happen in that instance?
 21 A. As I described previously, there
 22 would be a conversation with the pharmacy
 23 district manager who would basically say
 24 something to the effect of, okay, I didn't

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1 understand.
 2 - - -
 3 (Deposition Exhibit No. Rite
 4 Aid-Palmer-3, Annual Performance Review
 5 FY 2011, Bates stamped
 6 Rite_Aid_OMDL_0050666 through
 7 Rite_Aid_OMDL_0050674, was marked for
 8 identification.)
 9 - - -
 10 BY MR. SIMMER:
 11 Q. Hand you what we've marked as
 12 Palmer Exhibit Number 3, if you would take a look
 13 at that. I'll identify it for the record. And
 14 again the Bates number is cut off, unfortunately,
 15 so this is Rite_Aid_OMDL_0050666 through
 16 Rite_Aid_OMDL_0050674.
 17 It's a multi-page document. I'm
 18 only going to ask you questions about the very
 19 first page of the document. Feel free to look at
 20 the entire document if you'd like.
 21 A. (Reviewing document.)
 22 Okay.
 23 Q. And you've seen this before, I
 24 take it?

<p style="text-align: right;">Page 94</p> <p>1 A. Yes.</p> <p>2 Q. When was the last time you saw</p> <p>3 this?</p> <p>4 A. This is a performance review. I</p> <p>5 believe this is one of the performance reviews</p> <p>6 that I saw during depo prep.</p> <p>7 Q. So you've seen this recently.</p> <p>8 Right?</p> <p>9 A. Yes, I believe so.</p> <p>10 Q. Am I right that this is your</p> <p>11 performance review? And if I have it right, in</p> <p>12 the upper right-hand corner is -- there's</p> <p>13 "HRPP0009," then right below that is a date,</p> <p>14 April 29, 2011.</p> <p>15 Do you see that?</p> <p>16 MR. LAVELLE: Object to form.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. SIMMER:</p> <p>19 Q. And am I right that that would be</p> <p>20 the date of some kind that was generated when</p> <p>21 this performance review was prepared?</p> <p>22 A. Yeah. I'm not sure if that date</p> <p>23 is when it was prepared, when it was posted, when</p> <p>24 it was uploaded. I don't know.</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. So I just want to ask you some</p> <p>2 questions about that. You say here that you</p> <p>3 "control or monitor."</p> <p>4 Is there a difference in terms of</p> <p>5 what you were actually doing when you were</p> <p>6 controlling versus monitoring?</p> <p>7 A. Yes. I would say monitoring</p> <p>8 doesn't necessarily involve an action. The use</p> <p>9 of the word "control" here references the process</p> <p>10 we've already described.</p> <p>11 Q. So when you're monitoring, what</p> <p>12 are you doing?</p> <p>13 A. Monitoring would mean that the</p> <p>14 process is flowing through you, that you see the</p> <p>15 activities and may or may not take different</p> <p>16 actions to those.</p> <p>17 Q. And then the control part of it</p> <p>18 is the active part; is that right?</p> <p>19 A. Yes. That would be forwarding on</p> <p>20 to McKesson or not forwarding on to McKesson.</p> <p>21 Q. Okay. And that's the next thing</p> <p>22 you list there. You say "McKesson Threshold</p> <p>23 limits."</p> <p>24 That's one of the things that you</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. If I have it right that there's a</p> <p>2 portion of this that has general position</p> <p>3 description, then there's a self-assessment part</p> <p>4 of the form and then there's the supervisor that</p> <p>5 does an assessment as well; is that right?</p> <p>6 MR. LAVELLE: Object to form.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. SIMMER:</p> <p>9 Q. And who was the supervisor that</p> <p>10 was reviewing you for this performance review?</p> <p>11 A. I don't know.</p> <p>12 Q. I direct your attention to the</p> <p>13 "Self Assessment" portion in the middle of the</p> <p>14 first page.</p> <p>15 A. Yes.</p> <p>16 Q. And if you would, would you read</p> <p>17 into the record, starting the second sentence,</p> <p>18 just read that second sentence where it says, "In</p> <p>19 addition."</p> <p>20 A. "In addition several processes I</p> <p>21 control or monitor (See below) such as McKesson</p> <p>22 Threshold limits, Monthly portal counts and Above</p> <p>23 Average app have direct impact on in stock</p> <p>24 position."</p>	<p style="text-align: right;">Page 97</p> <p>1 control or monitor; is that right?</p> <p>2 A. That was what I was referring to</p> <p>3 here.</p> <p>4 Q. And which were you doing,</p> <p>5 controlling or monitoring the McKesson threshold</p> <p>6 limits?</p> <p>7 A. I believe it's both, because</p> <p>8 monitoring is seeing the activity. Controlling</p> <p>9 is potentially taking an action on an activity.</p> <p>10 Q. So you were doing both with</p> <p>11 regard to McKesson threshold limits?</p> <p>12 MR. LAVELLE: Object to form.</p> <p>13 THE WITNESS: Yes. As described</p> <p>14 previously.</p> <p>15 BY MR. SIMMER:</p> <p>16 Q. The next thing you say you're</p> <p>17 doing is the "Above Average app."</p> <p>18 What is the "Above Average app"?</p> <p>19 A. App refers to application in this</p> <p>20 instance, so the Above Average application was a</p> <p>21 portal application.</p> <p>22 Q. Okay. And you go on to say that</p> <p>23 "have direct impact on in stock position."</p> <p>24 What is that?</p>

<p style="text-align: right;">Page 98</p> <p>1 A. That is the inventory, the 2 accuracy of the inventory. 3 Q. So if -- in your role as 4 controlling or monitoring the McKesson threshold 5 limit, you did have a direct impact on the 6 in-stock position of stores in the company. 7 Correct? 8 A. Potentially. 9 Q. That is, you could either say, 10 I'm not going to send this on to McKesson or I am 11 going to send it on to McKesson. 12 In either event, it would impact 13 the in-stock position of that store. Right? 14 MR. LAVELLE: Object to form. 15 THE WITNESS: Yes. But that's 16 not what this is really referring to. 17 What this is really referring to, again, 18 you know, the concept of pharmacy loss 19 prevention and that these tools could 20 potentially identify losses. 21 BY MR. SIMMER: 22 Q. So you're looking at losses again 23 in terms of shrinkage? Is that the same concept? 24 A. Yes.</p>	<p style="text-align: right;">Page 100</p> <p>1 was receiving -- I think I described it 2 earlier, serving as a liaison or a 3 contact point between the stores and 4 McKesson, which is, you know, receiving 5 requests from the pharmacy district 6 managers and taking a look at those 7 requests, working with the PDMs in many 8 instances, and then forwarding or not 9 forwarding those requests on to McKesson. 10 That's the process. 11 BY MR. SIMMER: 12 Q. I'm going to apologize. I a 13 moment ago said I was only going to have you look 14 at the first page of this exhibit. There is 15 another page I want you to look at as well. It's 16 the third page -- actually, yes, the third page 17 of the exhibit. 18 A. Yes, okay. 19 Q. I'll identify it for the record 20 as 0050668. And you see in the upper right-hand 21 corner, "Page 3 of 9"? 22 A. Yes. 23 Q. Are we on the same page? 24 A. Yes.</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. And so what you're doing here 2 with the McKesson threshold limits, did it have 3 anything to do with suspicious order monitoring 4 as well? 5 MR. LAVELLE: Object to form. 6 THE WITNESS: Yeah, I don't -- 7 McKesson -- this was a McKesson program 8 that they built. So I don't know that I 9 can -- I can answer what I did, I can 10 answer the process. I'm not sure I can 11 answer your question, which appears to be 12 more relative to design or something. 13 BY MR. SIMMER: 14 Q. So I'm just trying to establish 15 what it was you were doing when you were 16 controlling or monitoring McKesson's threshold 17 limits. 18 I think you've just testified 19 that it really was limited to examining whether 20 there was any shrinkage. Right? 21 MR. LAVELLE: Object to form. 22 THE WITNESS: No, no. The 23 process with regard -- what I was doing 24 with regards to McKesson threshold limits</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. I'd like to have you read in that 2 "Self Assessment" section the second full 3 sentence, where it starts "With regard to." 4 Could you read that into the 5 record, that full sentence, please. 6 A. "With regard to regulatory 7 compliance I am an active participant in the" 8 pharmacy "compliance subcommittee, the...risk 9 initiatives team, the high level...risk 10 assessment group, as well as...the biweekly 11 meeting with Robert Thompson on Pharmacy 12 Investigations." 13 Q. I think you misread that. It 14 says "leading the biweekly meeting." 15 Do I have that right? 16 A. Oh. It says, "as well as 17 leading." I'm not sure what I said before. 18 Q. Okay. This says you are "an 19 active participant in the Rx compliance 20 subcommittee." 21 What is that subcommittee? 22 A. Rite Aid has a compliance 23 committee structure. And that structure involves 24 numerous subcommittees, including a pharmacy</p>

<p style="text-align: right;">Page 102</p> <p>1 subcommittee. 2 Q. And what were the 3 responsibilities of that Rx compliance 4 subcommittee? 5 A. I'm not the chair of the pharmacy 6 compliance committee, nor do I have the charter 7 in front of me to be comfortable answering that 8 question. 9 Q. So you do recall that that 10 subcommittee has a charter; is that correct? 11 A. Many of the subcommittees have 12 charters. I don't know for sure if the pharmacy 13 compliance subcommittee has a charter. 14 Q. What people were on the 15 subcommittee? 16 A. At this point in time? 17 Q. Yes, sir. 18 A. I can't give you an exact roster 19 of membership for 2011. 20 Q. How many individuals were on the 21 committee? 22 A. Approximately 10 to 12. 23 Q. And what did you actually do on 24 this subcommittee?</p>	<p style="text-align: right;">Page 104</p> <p>1 A. Yeah. I'm not sure I would use 2 the word "deliberated." But I think -- it 3 depends. I mean, somebody may -- the various 4 members of the committee may bring up something 5 that they have an interest in or for discussion. 6 Q. And how do the members get these 7 subjects that they're interested in? 8 MR. LAVELLE: Objection. Again, 9 I'll direct the witness not to answer to 10 the extent it would disclose the 11 substance of attorney-client 12 communications. 13 THE WITNESS: At the advice of 14 counsel, I will not answer the question. 15 BY MR. SIMMER: 16 Q. So the subjects that we're 17 talking about came from legal counsel; is that 18 correct? 19 MR. LAVELLE: Same objection, 20 same direction not to answer to the 21 extent it would disclose the substance of 22 attorney-client communications. 23 BY MR. SIMMER: 24 Q. I'm only asking for a yes or no</p>
<p style="text-align: right;">Page 103</p> <p>1 MR. LAVELLE: Objection. I'll 2 direct the witness not to answer to the 3 extent it would disclose attorney-client 4 communications. 5 BY MR. SIMMER: 6 Q. You can answer. 7 A. I will not answer the question at 8 the advice of counsel. 9 Q. Did this subcommittee report to 10 the general counsel? 11 A. This subcommittee reports to the 12 corporate compliance committee, which the general 13 counsel is involved in. 14 Q. So a general description of what 15 the subcommittee did is not a privileged 16 communication, however. I'm just trying to 17 understand what the subcommittee did. 18 A. Any of the subcommittees 19 generally discussed potential, you know, 20 initiatives, programs or, you know, compliance 21 information, related information. 22 Q. And where did they receive 23 information that they considered as they -- you 24 deliberated on this subcommittee?</p>	<p style="text-align: right;">Page 105</p> <p>1 answer on this, I'm not asking for any 2 attorney-client communication. 3 Did the subjects that the members 4 of the subcommittee came up with come from 5 counsel for the company? 6 A. At the advice of counsel, I'm not 7 going to answer that question. 8 Q. It's a yes or no question. You 9 can answer. That's not violating any privilege. 10 It's a yes or no. 11 A. Can you repeat it one more time 12 then? 13 Q. The subjects you said that the 14 members of the subcommittee came up with, did 15 those come from counsel for the company? 16 A. Not all of them, no. 17 Q. There were some that came from 18 counsel? 19 A. I don't recall if some did or did 20 not come from counsel, but certainly not all of 21 them. 22 Q. Were there some ideas or subjects 23 that you came up with and brought to the 24 subcommittee?</p>

<p style="text-align: right;">Page 106</p> <p>1 A. I don't recall.</p> <p>2 Q. How often did this subcommittee</p> <p>3 meet?</p> <p>4 A. At this point in time?</p> <p>5 Q. Yes, sir.</p> <p>6 A. I don't recall.</p> <p>7 Q. The next says you served on "the</p> <p>8 Rx risk initiatives team."</p> <p>9 What is that?</p> <p>10 A. The Rx risk initiatives team was</p> <p>11 sort of a group that we brought together, or Rite</p> <p>12 Aid brought together, to where when a new large</p> <p>13 initiative of some sort was being proposed, a</p> <p>14 multi-functional group could discuss that</p> <p>15 initiative and, you know, whether there might be</p> <p>16 any significant risks that are associated with</p> <p>17 it.</p> <p>18 Q. Was this a standing committee or</p> <p>19 was it an ad hoc committee?</p> <p>20 MR. LAVELLE: Object to form.</p> <p>21 THE WITNESS: At this point in</p> <p>22 time, I don't know.</p> <p>23 BY MR. SIMMER:</p> <p>24 Q. Did it become a standing</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Were all the members of the</p> <p>2 subcommittee corporate headquarters employees?</p> <p>3 A. I don't know that I can answer</p> <p>4 that 100 percent accurately.</p> <p>5 Q. You also say here that you led</p> <p>6 "the biweekly meeting with Robert Thompson on</p> <p>7 Pharmacy Investigations."</p> <p>8 What is that in reference to?</p> <p>9 A. So we had a meeting where myself</p> <p>10 and a couple other individuals like HR would meet</p> <p>11 with Robert Thompson, who was the EVP of pharmacy</p> <p>12 at the time, to discuss significant</p> <p>13 investigations involving pharmacists of various</p> <p>14 nature.</p> <p>15 Q. What are the types of things you</p> <p>16 were investigating?</p> <p>17 A. It could be -- it could be all</p> <p>18 kinds of things. It could be anything from, you</p> <p>19 know, an issue involving theft of product, front</p> <p>20 end or pharmacy. It could involve inappropriate</p> <p>21 behavior. It could involve allegations of</p> <p>22 serious procedural violations. Any of a number</p> <p>23 of issues.</p> <p>24 Q. And what was the purpose of these</p>
<p style="text-align: right;">Page 107</p> <p>1 committee later?</p> <p>2 A. It is an existing committee that</p> <p>3 meets on a periodic basis.</p> <p>4 Q. Has a charter?</p> <p>5 A. Again, I don't know which groups</p> <p>6 have charters or not. I do not believe this</p> <p>7 group has a charter.</p> <p>8 Q. Let me just go back for a second.</p> <p>9 On the Rx compliance</p> <p>10 subcommittee, were there meeting agendas?</p> <p>11 A. At that point in time, I believe</p> <p>12 so.</p> <p>13 Q. Was there a secretary of the</p> <p>14 committee?</p> <p>15 A. No.</p> <p>16 Q. Did someone take notes of these</p> <p>17 subcommittee meetings?</p> <p>18 A. I don't know the answer to that.</p> <p>19 Q. Were these face-to-face meetings?</p> <p>20 MR. LAVELLE: Object to form.</p> <p>21 THE WITNESS: Not everyone would</p> <p>22 be present face to face but some people</p> <p>23 were.</p> <p>24 BY MR. SIMMER:</p>	<p style="text-align: right;">Page 109</p> <p>1 biweekly meetings you held with Robert Thompson?</p> <p>2 A. I don't know that I can say</p> <p>3 specifically what the purpose was, because the</p> <p>4 meetings were established before I -- I was not</p> <p>5 the first person -- I didn't establish these</p> <p>6 meetings. I took them over. So like I don't</p> <p>7 know like if at the early onset there was some</p> <p>8 discussion of why are we doing this.</p> <p>9 Q. So any of the three committees</p> <p>10 that you refer to in this sentence involve</p> <p>11 suspicious order monitoring?</p> <p>12 A. No.</p> <p>13 Q. So not any aspect of what the</p> <p>14 activities were that these three committees were</p> <p>15 involved in ever looked at suspicious order</p> <p>16 monitoring. Correct?</p> <p>17 MR. LAVELLE: Object to form.</p> <p>18 THE WITNESS: I would never say</p> <p>19 ever regarding anything. That's asking</p> <p>20 for a recollection of, you know, eight</p> <p>21 years and hundreds and hundreds and</p> <p>22 hundreds of meetings. But the purpose of</p> <p>23 the meetings was not directly suspicious</p> <p>24 order monitoring.</p>

<p style="text-align: right;">Page 110</p> <p>1 BY MR. SIMMER:</p> <p>2 Q. As far as you recall, however,</p> <p>3 you don't recall ever that any of these</p> <p>4 committees discuss a specific instance of --</p> <p>5 concerning a suspicious order. Right?</p> <p>6 MR. LAVELLE: Objection to the</p> <p>7 form of the question. And I also object</p> <p>8 and direct the witness not to answer to</p> <p>9 the extent it would disclose the</p> <p>10 substance of attorney-client</p> <p>11 communications.</p> <p>12 THE WITNESS: Yeah. At the</p> <p>13 advice of counsel, I'm not going to</p> <p>14 answer that question.</p> <p>15 BY MR. SIMMER:</p> <p>16 Q. It was a yes or no question. I</p> <p>17 didn't ask you to divulge any attorney-client</p> <p>18 communications. You can answer.</p> <p>19 MR. LAVELLE: Again, I direct the</p> <p>20 witness not to answer. It was a yes or</p> <p>21 no question seeking the substance of a</p> <p>22 communication. So, yes, it does invade</p> <p>23 the attorney-client privilege</p> <p>24 potentially.</p>	<p style="text-align: right;">Page 112</p> <p>1 attorney-client communications to answer</p> <p>2 this question, which is seeking the</p> <p>3 substance of discussions that occurred,</p> <p>4 including the pharmacy compliance</p> <p>5 committee. I direct the witness not to</p> <p>6 answer the question.</p> <p>7 THE WITNESS: At the advice of</p> <p>8 counsel, I will not answer the question.</p> <p>9 MR. SIMMER: Madam Court</p> <p>10 Reporter, I'd like to certify that last</p> <p>11 series of questions and answers and we'll</p> <p>12 take this to the special master.</p> <p>13 BY MR. SIMMER:</p> <p>14 Q. Would you read the next sentence</p> <p>15 after that, please, sir?</p> <p>16 A. Yes.</p> <p>17 "I also traveled with the</p> <p>18 regulatory compliance group throughout the chain</p> <p>19 presenting on regulatory compliance and was also</p> <p>20 personally involved in conducting some high level</p> <p>21 investigations."</p> <p>22 Q. So you say that you traveled with</p> <p>23 the regulatory compliance group.</p> <p>24 Just trying to understand what</p>
<p style="text-align: right;">Page 111</p> <p>1 MR. SIMMER: How in the world</p> <p>2 does that involve an attorney-client</p> <p>3 communication? You've established no</p> <p>4 predicate whatsoever for the objection.</p> <p>5 You can answer.</p> <p>6 MR. LAVELLE: No, you can't.</p> <p>7 Direct the witness not to answer.</p> <p>8 THE WITNESS: I don't even know</p> <p>9 what predicate means.</p> <p>10 MR. SIMMER: He hasn't even</p> <p>11 established that there was any kind of</p> <p>12 attorney-client communication going on</p> <p>13 with regard to suspicious order</p> <p>14 monitoring for these committees.</p> <p>15 THE WITNESS: Yeah --</p> <p>16 MR. LAVELLE: Wait until he asks</p> <p>17 a question that is directed to you. He's</p> <p>18 just arguing with me.</p> <p>19 BY MR. SIMMER:</p> <p>20 Q. Did the committees ever deal with</p> <p>21 suspicious orders that you recall, these three</p> <p>22 committees?</p> <p>23 MR. LAVELLE: Again, objection to</p> <p>24 the extent you would have to disclose</p>	<p style="text-align: right;">Page 113</p> <p>1 you mean by the regulatory compliance group.</p> <p>2 What is that?</p> <p>3 A. There was a period of time where</p> <p>4 a multi-functional group from corporate would --</p> <p>5 we referred to them as road shows -- would travel</p> <p>6 throughout the regions or areas and speak to</p> <p>7 field leadership on a number of regulatory-type</p> <p>8 issues.</p> <p>9 Q. What was the purpose of those</p> <p>10 road show presentations that you gave?</p> <p>11 A. Specifically mine or in general?</p> <p>12 Q. In general, sir.</p> <p>13 A. In general, okay.</p> <p>14 The purpose of the regulatory</p> <p>15 road shows was to teach, reiterate and reinforce,</p> <p>16 educate on various compliance areas.</p> <p>17 Q. So at this point in time, you</p> <p>18 were in the loss prevention department. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. Was that part of compliance?</p> <p>21 A. Organizational structure?</p> <p>22 Q. Yes, sir.</p> <p>23 A. Yes.</p> <p>24 Q. So when you're talking about the</p>

<p style="text-align: right;">Page 114</p> <p>1 regulatory compliance group, that's an</p> <p>2 overarching department that loss prevention is a</p> <p>3 part of; is that right?</p> <p>4 A. Well, there was no formalized</p> <p>5 regulatory compliance group, but the loss</p> <p>6 prevention department reported up to the internal</p> <p>7 assurance/compliance organization at that point</p> <p>8 in time.</p> <p>9 Q. So when you talk about the</p> <p>10 regulatory compliance group, there wasn't an</p> <p>11 actual official group by that name; is that</p> <p>12 right?</p> <p>13 A. That's correct.</p> <p>14 Q. And instead, it was internal</p> <p>15 assurance/compliance; is that right?</p> <p>16 A. There were more participants than</p> <p>17 just internal assurance or compliance that</p> <p>18 participated.</p> <p>19 Q. I'm just trying to establish, you</p> <p>20 said that a loss prevention department reported</p> <p>21 up to internal assurance/compliance?</p> <p>22 A. That's correct.</p> <p>23 Q. Who headed that group?</p> <p>24 A. At that point in time, that was</p>	<p style="text-align: right;">Page 116</p> <p>1 Rite_Aid_OMDL_0032890 through</p> <p>2 Rite_Aid_OMDL_0033115, was marked for</p> <p>3 identification.)</p> <p>4 - - -</p> <p>5 BY MR. SIMMER:</p> <p>6 Q. I'm going to hand you a massive</p> <p>7 exhibit.</p> <p>8 MR. LAVELLE: Why don't you put</p> <p>9 those next to the court reporter so she's</p> <p>10 got them.</p> <p>11 BY MR. SIMMER:</p> <p>12 Q. What we've marked as Palmer</p> <p>13 Exhibit Number 4. And lo and behold, the Bates</p> <p>14 numbers are on this document.</p> <p>15 A. Good.</p> <p>16 Q. Take a moment. I don't -- suit</p> <p>17 yourself, but I'm only going to ask questions</p> <p>18 about certain portions of this document. I'll</p> <p>19 identify it for the record as</p> <p>20 Rite_Aid_OMDL_0032890 through 0033115.</p> <p>21 A. Okay.</p> <p>22 Q. Have you seen this before?</p> <p>23 A. Yes. I recognize this.</p> <p>24 Q. When did you last see it?</p>
<p style="text-align: right;">Page 115</p> <p>1 Tony Bellezza.</p> <p>2 Q. And you say that you traveled</p> <p>3 throughout the chain.</p> <p>4 What does that mean?</p> <p>5 A. The chain would be the --</p> <p>6 wherever we had stores in the country. That</p> <p>7 means, you know, to different -- all across the</p> <p>8 country.</p> <p>9 Q. And you gave presentations to --</p> <p>10 I believe you said to field management; is that</p> <p>11 right?</p> <p>12 A. Yes.</p> <p>13 Q. This isn't the store managers?</p> <p>14 A. No.</p> <p>15 Q. So what level individuals are we</p> <p>16 talking about that you gave these presentations</p> <p>17 to?</p> <p>18 A. District and regional-type</p> <p>19 leaders.</p> <p>20 - - -</p> <p>21 (Deposition Exhibit No. Rite</p> <p>22 Aid-Palmer-4, PowerPoint, "Division 2</p> <p>23 Region 22 & Group 51 Regulatory</p> <p>24 Compliance November 2010," Bates stamped</p>	<p style="text-align: right;">Page 117</p> <p>1 A. I believe I saw some of this</p> <p>2 during depo prep. I don't -- this is huge. I</p> <p>3 don't know that I saw all of it.</p> <p>4 Q. Is this the kind of presentation</p> <p>5 that you were describing in the document we were</p> <p>6 just looking at?</p> <p>7 A. Yes, it is.</p> <p>8 Q. So this would be the road show</p> <p>9 presentation that you gave to field management?</p> <p>10 A. Well, this would be one example</p> <p>11 of a road show presentation that a bunch of</p> <p>12 different people gave to field management. I</p> <p>13 certainly did not present on this entire</p> <p>14 document.</p> <p>15 Q. So on the face page of this, it</p> <p>16 says, "Division 2, Region 22 & Group 51</p> <p>17 Regulatory Compliance, November" 2011.</p> <p>18 Tell us what that --</p> <p>19 MR. LAVELLE: Object to form.</p> <p>20 2010.</p> <p>21 BY MR. SIMMER:</p> <p>22 Q. I'm sorry, 2010. Excuse me.</p> <p>23 Tell us what that's saying on</p> <p>24 this face page.</p>

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1 A. That's reflective of the audience
2 for this particular session.
3 Q. So this is referring to division
4 2, which is a specific region of the country; is
5 that right?
6 MR. LAVELLE: Object to form.
7 THE WITNESS: A division is the
8 largest sort of subgroup, if -- how Rite
9 Aid stores are broken out, so yes.
10 BY MR. SIMMER:
11 Q. Did you have a hand in preparing
12 any part of this presentation?
13 A. The answer is yes. I just want
14 to look to make sure I can find -- yes.
15 Q. And I think you said a moment
16 ago, there were a group of individuals that gave
17 as a team -- on a team basis gave this
18 presentation; is that right?
19 A. Yes.
20 Q. And it says -- we just went over
21 it a moment ago -- you actually were one of the
22 participants in giving these presentations.
23 Right?
24 A. Yes.

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1 Q. So how often did you give these
2 presentations to specific field employees?
3 MR. LAVELLE: Object to form.
4 THE WITNESS: Yeah. I don't
5 recall how often the road shows occurred.
6 BY MR. SIMMER:
7 Q. Did you try to hit regions of the
8 country, you know, on a relative frequency
9 that -- to keep the information up to date?
10 MR. LAVELLE: Object to form.
11 THE WITNESS: I didn't schedule
12 or wasn't really involved in the
13 scheduling of the road shows. I just
14 participated on topics. So I can't
15 really answer that.
16 BY MR. SIMMER:
17 Q. Who was the coordinator for these
18 road shows?
19 A. I don't know.
20 Q. I direct your attention to slide
21 9.
22 Do you see the reference to
23 "Intense Regulatory Landscape" at the top of this
24 slide?

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1 A. Yes.
2 Q. And do you see where it says, "4
3 years ago," and then there's an arrow over to
4 "Today"?
5 A. Yes.
6 Q. Do you have an understanding what
7 was being presented in this slide about the
8 regulatory landscape here?
9 A. This was part of Tony Bellezza's
10 presentation. I'd have to speculate on what he
11 was referring to. This was not part of my
12 presentation.
13 Q. So you don't have any
14 understanding what this is talking about?
15 A. I could guess, but you're asking
16 me to speak to content in a presentation that I
17 didn't write.
18 Q. I'm just trying to understand
19 what you know and don't know about this
20 particular document.
21 This is -- you're saying that you
22 don't have a firsthand knowledge about this
23 slide; is that right?
24 MR. LAVELLE: Object to form.

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1 THE WITNESS: Yeah, but Tony
2 prepared his own slides and presented on
3 his own material. And not everyone that
4 presented necessarily would even be in
5 the room during other presenters'
6 material.
7 BY MR. SIMMER:
8 Q. So that it's possible you weren't
9 even in the room when this portion of this
10 presentation would have been given. Right?
11 A. It's possible. I tried to attend
12 them all, but again, my focus is on my part of
13 the presentation.
14 Q. How was it determined what part
15 of the presentation you would be giving?
16 A. In my case, Tony Bellezza would
17 ask me to do this or that. I think it changed
18 over time.
19 Q. Take a look at slides 39 and 40,
20 if you would. This is Bates ending 32928 and
21 32929.
22 A. Yes.
23 Q. It appears to be a list of "Top
24 Areas of Noncompliance - Controlled Substances

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1 (Total Company)."
2 Do you see that?
3 A. I see that.
4 Q. Did you have a hand in preparing
5 that list?
6 A. No.
7 Q. Who would have prepared that?
8 A. I don't know. Generally it said
9 who was doing what presentations, but I can't --
10 it's a very large document, and at the moment, I
11 can't seem to determine whose presentation we're
12 in.
13 Q. Again, you're just -- you don't
14 have any specific knowledge about the content of
15 those two slides. Right?
16 A. Not specifically. This wasn't
17 part of my presentation.
18 Q. Okay. Could you turn to -- I
19 guess there's not a number on it, but I think
20 it's slide 147. I'll identify it for the record
21 as 0033036, section "Controlled Drug Ordering
22 Limits."
23 Do you see that?
24 A. 0033006?

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1 MR. LAVELLE: No. 33036.
2 Another 30 pages in.
3 THE WITNESS: Yes.
4 BY MR. SIMMER:
5 Q. Is that a section you would have
6 prepared?
7 A. Yes, I believe so.
8 Q. Can I direct your attention to
9 the next page, please. That's Bates ending
10 33037.
11 Do you see that?
12 A. Yes.
13 Q. And it says "Types of Ordering
14 Limits."
15 Do you see that?
16 A. Yes.
17 Q. And the first heading is "DSD
18 Ordering limits."
19 What is that?
20 A. DSD is direct store delivery. So
21 as we discussed before, that would be vendors
22 other than the Rite Aid warehouse.
23 Q. And that would include McKesson.
24 Correct?

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1 A. That would.
2 Q. Okay. And there are ordering
3 limits under this DSD system; is that right?
4 A. Yes.
5 Q. And the second big bullet, you
6 see, "McKesson CSMP thresholds."
7 Do you see that?
8 A. Yes.
9 Q. And that's different than the DSD
10 ordering limits. Right?
11 A. Yes.
12 Q. And it's a reference to
13 controlled drug only. Right?
14 A. Yes.
15 Q. And the third one -- big bullet
16 is "DC ordering limits."
17 And what does DC stand for?
18 A. Distribution center.
19 Q. And what is that?
20 A. Distribution center is referring
21 to our warehouse or warehouses.
22 Q. And that specific ordering limit
23 that's in reference to, what is that?
24 MR. LAVELLE: Object to form.

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1 THE WITNESS: It's just what it
2 says. The distribution center will not
3 ship more than 5,000 units of any
4 controlled drug per order.
5 BY MR. SIMMER:
6 Q. If you look at the next page,
7 which is 0033038, you see the big heading "DSD
8 Order Limits."
9 Do you see that?
10 A. Yes.
11 Q. And did the DSD order limits
12 include controlled substances?
13 A. Yes.
14 Q. Okay. You see the bottom bullet
15 here, where it says, "If a store is attempting to
16 order more than their limit the following message
17 will invoke -- 'Order is greater than maximum
18 order quantity allowed. Maximum order currently
19 allowed for this NDC is X.'"
20 Do you see that?
21 A. Yes.
22 Q. Can you, in your own words, say
23 what was happening here?
24 MR. LAVELLE: Object to form.

<p style="text-align: right;">Page 126</p> <p>1 THE WITNESS: The DSD order limit</p> <p>2 process was not my area. That was sort</p> <p>3 of a different individual's area. But I</p> <p>4 think it's -- it appears -- it's pretty</p> <p>5 straightforward as it's laid out here.</p> <p>6 BY MR. SIMMER:</p> <p>7 Q. Well, this is part of the slide</p> <p>8 deck you said you prepared. Right?</p> <p>9 A. I prepared this working with and</p> <p>10 I thought what you said was presented. So I</p> <p>11 apologize. But this would have been prepared</p> <p>12 with more than one person having input into this,</p> <p>13 because there's really three different</p> <p>14 individuals involved and three different</p> <p>15 processes involved.</p> <p>16 So just to be clear, I believe I</p> <p>17 presented this material, but I certainly wouldn't</p> <p>18 have prepared this material on my own. I would</p> <p>19 have needed other individuals' assistance. So if</p> <p>20 I said prepared versus presented, I apologize.</p> <p>21 Q. That's fine. With that</p> <p>22 correction.</p> <p>23 So you did present this slide.</p> <p>24 Right?</p>	<p style="text-align: right;">Page 128</p> <p>1 A. Yes.</p> <p>2 Q. Do you see where the heading says</p> <p>3 "McKesson Controlled Substance Monitoring Program</p> <p>4 (CSMP) Thresholds?"</p> <p>5 A. Yes.</p> <p>6 Q. Is this a slide you prepared?</p> <p>7 A. Yes.</p> <p>8 Q. Tell us what you're conveying in</p> <p>9 this slide.</p> <p>10 A. The -- basically a summary of how</p> <p>11 the threshold monitoring process works.</p> <p>12 Q. And this is the threshold</p> <p>13 monitoring process that McKesson set up. Right?</p> <p>14 A. Yes.</p> <p>15 Q. And this is the one I think you</p> <p>16 testified earlier was set up in 2008 by McKesson?</p> <p>17 A. Yes.</p> <p>18 Q. And the one we looked at earlier,</p> <p>19 you had a role in controlling or monitoring.</p> <p>20 Right?</p> <p>21 MS. DORRIS: Object to form.</p> <p>22 THE WITNESS: Did someone say</p> <p>23 something?</p> <p>24 BY MR. SIMMER:</p>
<p style="text-align: right;">Page 127</p> <p>1 A. I believe I did present this</p> <p>2 particular piece of material.</p> <p>3 Q. And it is your testimony that DSD</p> <p>4 order limits include controlled substances.</p> <p>5 Right?</p> <p>6 A. Yes.</p> <p>7 Q. And if a store ordered more than</p> <p>8 their limit, they would be told that they -- a</p> <p>9 maximum order quantity allowed, and they would</p> <p>10 actually be told what the quantity limit is.</p> <p>11 Right?</p> <p>12 A. That's what it says, so I assume</p> <p>13 that to be correct.</p> <p>14 Q. Who was responsible for the DSD</p> <p>15 orders?</p> <p>16 A. At this point in time?</p> <p>17 Q. Yes, sir.</p> <p>18 A. The individual who had expertise</p> <p>19 in this area I believe was Charlie Miller.</p> <p>20 Q. And what department did he work</p> <p>21 in?</p> <p>22 A. Pharmacy operations.</p> <p>23 Q. Can I direct your attention to</p> <p>24 the next page.</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. You had responsibility, you</p> <p>2 talked about it in your evaluation, that you</p> <p>3 had responsibility --</p> <p>4 A. No, I thought I heard somebody</p> <p>5 else.</p> <p>6 Q. -- for the CSMP. Right?</p> <p>7 MR. LAVELLE: By way of</p> <p>8 explanation, counsel for McKesson is down</p> <p>9 there, and she just made an objection to</p> <p>10 the form of the question.</p> <p>11 Do you need the -- do you need to</p> <p>12 have the question repeated?</p> <p>13 THE WITNESS: Yeah. I'm sorry,</p> <p>14 that...</p> <p>15 BY MR. SIMMER:</p> <p>16 Q. I'm just trying to establish that</p> <p>17 this CSMP threshold with regard to Rite Aid, you</p> <p>18 said in your performance evaluation, the</p> <p>19 self-assessment section, that you had a role in</p> <p>20 controlling or monitoring this. Right?</p> <p>21 A. Yes. I've described my role</p> <p>22 many, many, many times to this point.</p> <p>23 Q. I'm just trying to establish,</p> <p>24 that's what you were talking about in reference</p>

<p style="text-align: right;">Page 130</p> <p>1 on this slide. Right?</p> <p>2 A. Yes. I'm referring to the</p> <p>3 description of my role in the process that I have</p> <p>4 described many times.</p> <p>5 Q. Can I direct your attention to</p> <p>6 the third bullet, please, when it -- where it</p> <p>7 says, "When a monthly threshold is met, all or</p> <p>8 part of the order will be denied, with a 'Monthly</p> <p>9 regulatory limit exceeded' message on the</p> <p>10 invoice."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And tell us what you mean by</p> <p>14 what's happening here.</p> <p>15 MR. LAVELLE: Object to form.</p> <p>16 THE WITNESS: So the way it would</p> <p>17 work is when a store places an order and</p> <p>18 all or part of that order hits the base</p> <p>19 code limit, they would receive a message</p> <p>20 on the invoice.</p> <p>21 So the way in which the store</p> <p>22 would be informed would be right here.</p> <p>23 BY MR. SIMMER:</p> <p>24 Q. So there are instances where all</p>	<p style="text-align: right;">Page 132</p> <p>1 of you object. You don't need to do a</p> <p>2 piling on here, so...</p> <p>3 MR. LAVELLE: Well, it's a bad</p> <p>4 question, but go on.</p> <p>5 MR. SIMMER: You want to be the</p> <p>6 questioner, John?</p> <p>7 MR. LAVELLE: I will be later</p> <p>8 today.</p> <p>9 THE WITNESS: Can you repeat the</p> <p>10 question?</p> <p>11 BY MR. SIMMER:</p> <p>12 Q. I'm trying to understand a</p> <p>13 circumstance when McKesson denied all of the</p> <p>14 order, what's your understanding about why they</p> <p>15 made that decision to deny all of the order?</p> <p>16 MS. DORRIS: Object to form.</p> <p>17 THE WITNESS: It would have to do</p> <p>18 with how much of the threshold was left.</p> <p>19 So, for example, if the previous order</p> <p>20 used up all of the monthly threshold,</p> <p>21 then the subsequent order all would be</p> <p>22 denied. If the previous order didn't use</p> <p>23 up all of the order, and the second order</p> <p>24 in its entirety took it over the limit,</p>
<p style="text-align: right;">Page 131</p> <p>1 of the order was denied. Right?</p> <p>2 A. Yes.</p> <p>3 Q. And there were instances where</p> <p>4 part of the order was denied. Right?</p> <p>5 A. I believe that to be correct.</p> <p>6 Q. So how do I know which is which?</p> <p>7 I mean, is it always all or is it always part?</p> <p>8 MR. LAVELLE: Object to form.</p> <p>9 BY MR. SIMMER:</p> <p>10 Q. Just trying to understand.</p> <p>11 A. You would know what you ordered</p> <p>12 and you would know what you received, so it</p> <p>13 wouldn't be a difficult mathematical calculation</p> <p>14 to ascertain that.</p> <p>15 Q. So instances where McKesson</p> <p>16 denied all of the order, what would go into that</p> <p>17 decision, as you understand it?</p> <p>18 MS. DORRIS: Object to form.</p> <p>19 MR. LAVELLE: Also object to</p> <p>20 form.</p> <p>21 THE WITNESS: Yeah, I'm only --</p> <p>22 MR. SIMMER: Only one of you gets</p> <p>23 to object on that. The CMO says one</p> <p>24 objector only. So once one objects, all</p>	<p style="text-align: right;">Page 133</p> <p>1 then in that case, part of the order</p> <p>2 would be denied. It's a math thing.</p> <p>3 BY MR. SIMMER:</p> <p>4 Q. So in that instance, your</p> <p>5 understanding is that McKesson would fill up to</p> <p>6 the threshold and then that's all that would be</p> <p>7 shipped. Right?</p> <p>8 MS. DORRIS: Object to form.</p> <p>9 THE WITNESS: And the message</p> <p>10 would invoke.</p> <p>11 BY MR. SIMMER:</p> <p>12 Q. Look at the last bullet on this</p> <p>13 page. Do you see where it says, "If a store has</p> <p>14 an order blocked and has legitimate need to order</p> <p>15 more, the store needs to contact their PDM who</p> <p>16 will review the need and contact Andy Palmer</p> <p>17 (extension 7866), with the following information:</p> <p>18 1) Store Number, 2) The product required, and 3)</p> <p>19 The business reason" for "the percentage increase</p> <p>20 requested"?</p> <p>21 Do you see that?</p> <p>22 MR. LAVELLE: Object to form.</p> <p>23 THE WITNESS: Yes.</p> <p>24 BY MR. SIMMER:</p>

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1 Q. And that's the process that you
2 went through when you looked at threshold
3 increases. Right?

4 A. Yes. This is the process that
5 has been described multiple times.

6 Q. When you again -- when you say
7 the PDM who will review the need, what did you
8 mean by that?

9 A. Meaning that they should take a
10 look at the product and talk to the store and try
11 and gain an understanding of what is, you know,
12 specifically occurring, driving that -- driving
13 that need.

14 Q. And what are business reasons
15 that would justify an increase?

16 A. We've actually covered that, but
17 I will be happy to provide some examples.

18 Q. Just give us an -- give me some
19 examples of business need.

20 A. Okay. So a pour over or file buy
21 was one of the things we discussed. Organic
22 growth was one of the things we discussed. Some
23 other, you know, reasons would be new -- a new
24 provider in the area. I think we discussed that,

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1 like a new hospital opening up or, you know, the
2 existing hospital opening a cancer treatment
3 clinic. A new type of prescriber, for example,
4 like a podiatrist that maybe there was no
5 podiatrist in the area before, some new type of
6 prescriber. And possibly supply chain issues
7 with the Rite Aid distribution center would be
8 another relatively common business reason.

9 Q. Is it your understanding that the
10 PDM, when they're submitting this request, would
11 have had the opportunity to review prescription
12 data at the store level?

13 A. I can't -- I can't answer that.

14 Q. You don't know one way or the
15 other whether they ever looked at prescription
16 data at the store level?

17 A. I do not.

18 Q. I direct your attention to the
19 next page, please.

20 Do you see where it says "Rite
21 Aid Distribution Center Limits on Controlled Drug
22 Orders"?

23 A. Yes.

24 Q. And what's being conveyed on this

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1 slide?

2 A. The distribution center limits on
3 controlled substance orders.

4 Q. Now, did these requests to
5 increase above the threshold come to you in your
6 role?

7 A. No.

8 Q. Who would review those?

9 A. Those would go to Janet Hart.

10 Q. And just so I can clarify, the
11 CSMP threshold increase requests, those came to
12 you.

13 Was Janet involved in that
14 decision as well?

15 MR. LAVELLE: Object to form.

16 THE WITNESS: No, no.

17 BY MR. SIMMER:

18 Q. But with regard to the Rite Aid
19 distribution centers, that was a decision made by
20 Janet. Right?

21 A. Those were reviewed by Janet.

22 Q. Who prepared the content
23 describing this on this slide?

24 A. I can't answer that.

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1 Q. This is a slide you gave in these
2 presentations?

3 A. I presented. I would assume
4 Janet helped put this together.

5 Q. As you understand it, since
6 you're the one who gave the content on this, that
7 Rite Aid, for its own distribution centers, had a
8 quantity limit of 5,000 dosage unit of any
9 controlled drug and any location for one month.
10 Right?

11 MR. LAVELLE: Object to form.

12 THE WITNESS: That's what it
13 says, yes.

14 BY MR. SIMMER:

15 Q. That's the content you gave on
16 this slide, right, when you gave this
17 presentation?

18 MR. LAVELLE: Object to form.

19 THE WITNESS: Yes.

20 BY MR. SIMMER:

21 Q. And the second bullet, you say
22 that, "If a store orders" more than 5 units, "the
23 order will be cut back to" 5 units "by the
24 shipping DC."

<p style="text-align: right;">Page 138</p> <p>1 MR. LAVELLE: Object to form.</p> <p>2 MR. SIMMER: I haven't asked my</p> <p>3 question yet.</p> <p>4 MR. LAVELLE: Well, you said</p> <p>5 5 units. It says 5,000.</p> <p>6 MR. SIMMER: I'm sorry.</p> <p>7 MR. LAVELLE: I'm just trying to</p> <p>8 help you.</p> <p>9 BY MR. SIMMER:</p> <p>10 Q. "If a store orders over</p> <p>11 5,000 units the order will be cut back to</p> <p>12 5,000 units by the shipping DC."</p> <p>13 And that's the threshold limit</p> <p>14 that was imposed by Rite Aid for its own</p> <p>15 distribution centers. Right?</p> <p>16 A. Yes.</p> <p>17 Q. You see where it says, too, that</p> <p>18 if they want more, they can request more through</p> <p>19 their PDM?</p> <p>20 MR. LAVELLE: Object to form.</p> <p>21 THE WITNESS: Yes, yes.</p> <p>22 BY MR. SIMMER:</p> <p>23 Q. And the next bullet says what the</p> <p>24 PDM should do in terms of reviewing that request.</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. And the slide also goes on to</p> <p>2 say, "Historically this has been a rare</p> <p>3 requirement with less than a dozen locations</p> <p>4 currently authorized for over 5000 units of any</p> <p>5 item per order."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. So is it your understanding that</p> <p>9 this is indeed a rare occurrence?</p> <p>10 MR. LAVELLE: Object to form.</p> <p>11 THE WITNESS: Yeah. I believe</p> <p>12 that to be correct, but those are -- you</p> <p>13 know, Janet would have prepared the</p> <p>14 slide. But I have no reason to believe</p> <p>15 it wouldn't have been correct.</p> <p>16 BY MR. SIMMER:</p> <p>17 Q. With regard to the three</p> <p>18 different monitoring systems we're talking about</p> <p>19 here -- strike that.</p> <p>20 With regard to the three</p> <p>21 different types of ordering limits that were</p> <p>22 being used here, do I have it right that stores</p> <p>23 utilized all three of these?</p> <p>24 MR. LAVELLE: Object to form.</p>
<p style="text-align: right;">Page 139</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. If you look at the next slide,</p> <p>4 please.</p> <p>5 Do you see the header on this</p> <p>6 slide says, "Rite Aid Distribution Center Limits</p> <p>7 on Controlled Drug Orders"?</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And do you see where it says, in</p> <p>11 the first bullet, "If there is a valid need to</p> <p>12 increase a threshold for a controlled substance</p> <p>13 the PDM should contact Janet Hart."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Do you have an understanding what</p> <p>17 is meant by valid need?</p> <p>18 A. I would assume that's the same</p> <p>19 thing as business need in the case of the</p> <p>20 McKesson thresholds.</p> <p>21 Q. And you gave this slide in your</p> <p>22 presentations. Right?</p> <p>23 A. I would have spoken to this slide</p> <p>24 if I would have been presenting, yes.</p>	<p style="text-align: right;">Page 141</p> <p>1 THE WITNESS: Your question said</p> <p>2 stores use? I don't think that's what</p> <p>3 you actually meant. Stores don't use a</p> <p>4 distribution center limit on controlled</p> <p>5 drug orders.</p> <p>6 Would you like to clarify?</p> <p>7 BY MR. SIMMER:</p> <p>8 Q. So we have three different</p> <p>9 systems. Right?</p> <p>10 A. Three different limits.</p> <p>11 Q. I'm trying to understand, all</p> <p>12 three limits would be applicable to all the</p> <p>13 stores. Right?</p> <p>14 A. Yes.</p> <p>15 Q. I asked the question right.</p> <p>16 Okay. Thank you.</p> <p>17 And so would the thresholds for</p> <p>18 each of these three different limits was</p> <p>19 monitored across all stores across the entire</p> <p>20 country. Right?</p> <p>21 MR. LAVELLE: Object to form.</p> <p>22 THE WITNESS: I don't know that I</p> <p>23 can answer that the way that you phrased</p> <p>24 the question.</p>

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1 BY MR. SIMMER:

2 Q. What question can't you -- or can
3 you answer?

4 MR. LAVELLE: Object to form.

5 THE WITNESS: I believe there are
6 or were stores that don't even have
7 pharmacies. So when you say stores,
8 there would certainly be some stores --
9 if the store doesn't have a pharmacy
10 department, it wouldn't apply.

11 BY MR. SIMMER:

12 Q. Subject to your qualification
13 then for Rite Aid pharmacies, these three
14 ordering limits processes were used for all of
15 those stores nationwide. Right?

16 A. Yes. These were chain-wide
17 programs.

18 MR. LAVELLE: Counsel, if we're
19 ready to move to another document, it's
20 about 12:30. This might be a good time
21 for a lunch break?

22 MR. SIMMER: Can we go about 10
23 more minutes? Do you have a problem with
24 that?

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1 MR. LAVELLE: It's okay by me.

2 What do you -- what are your
3 thoughts? Are you okay? Do you need a
4 break? Can you go another 10 minutes?

5 THE WITNESS: I can go another 10
6 minutes.

7 MR. LAVELLE: Okay.

8 BY MR. SIMMER:

9 Q. Do you understand what the term
10 "diversion" means?

11 A. I believe I do.

12 Q. Can you tell us in your own words
13 what diversion means?

14 A. Diversion would mean deviation
15 from an established path.

16 Q. And based on your knowledge and
17 experience, you would agree with me that Rite Aid
18 had an obligation to prevent diversion. Right?

19 MR. LAVELLE: Object to form.

20 THE WITNESS: I believe that Rite
21 Aid did have policies, procedures,
22 processes to prevent drug diversion.

23 BY MR. SIMMER:

24 Q. Wasn't quite my question.

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1 I want to make sure I understand
2 that you would agree with me that Rite Aid had an
3 obligation to prevent diversion.

4 MR. LAVELLE: Object to form.

5 THE WITNESS: Okay. Your
6 question is in regard to diversion in
7 general, which is simply the deviation
8 from a known or established path. I'm
9 assuming that what you probably mean is
10 drug diversion.

11 BY MR. SIMMER:

12 Q. Yes. Drug diversion.

13 Did Rite Aid have an obligation
14 to prevent drug diversion?

15 MR. LAVELLE: Object to form.

16 THE WITNESS: I believe so.

17 BY MR. SIMMER:

18 Q. Based on your experience working
19 with the company, you're familiar with the
20 concept of a suspicious order in the context of
21 controlled substance distribution, aren't you?

22 A. The general concept, yes.

23 Q. And what in your words does it
24 mean?

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1 A. A suspicious order would be a
2 highly unusual order.

3 Q. And you would agree with me that
4 Rite Aid had an obligation to report any
5 suspicious orders to the DEA. Right?

6 MR. LAVELLE: Object to form.

7 THE WITNESS: I'm not 100 percent
8 familiar with the exact DEA requirement.
9 My understanding is distribution centers
10 have an obligation to report suspicious
11 orders.

12 BY MR. SIMMER:

13 Q. Not the company itself. Right?

14 MR. LAVELLE: Object to form.

15 THE WITNESS: Again, I'm not -- I
16 don't know that I can answer that
17 question. That's not really...

18 BY MR. SIMMER:

19 Q. Do you have an understanding of
20 what specific departments of the company had the
21 obligation to report suspicious orders to the
22 DEA?

23 MR. LAVELLE: Object to form.

24 THE WITNESS: I believe

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1 distribution centers would have an
 2 obligation to report suspicious orders.
 3 BY MR. SIMMER:
 4 Q. You would agree with me that Rite
 5 Aid had an obligation not to ship any suspicious
 6 orders. Right?
 7 MR. LAVELLE: Object to form.
 8 THE WITNESS: I can't answer
 9 that.
 10 BY MR. SIMMER:
 11 Q. You don't know the answer to that
 12 question?
 13 A. I don't know the answer to that
 14 question.
 15 Q. Do you know what the red flags of
 16 diversion are?
 17 A. I know of the concept for red
 18 flags as it relates to diversion.
 19 Q. And what's your understanding of
 20 the concept of the red flags of diversion?
 21 A. That red flags represent
 22 indicators that may indicate a deviation from the
 23 path or a possible deviation from the path.
 24 MR. SIMMER: We can take our

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1 break for lunch.
 2 MR. LAVELLE: Okay.
 3 THE VIDEOGRAPHER: Off the record
 4 at 12:31 p.m.
 5 - - -
 6 (A luncheon recess was taken from
 7 12:31 p.m. to 1:12 p.m.)
 8 - - -
 9 THE VIDEOGRAPHER: We're back on
 10 the record at 1:12 p.m.
 11 BY MR. SIMMER:
 12 Q. Mr. Palmer, are you familiar with
 13 Rite Aid's suspicious order monitoring program?
 14 A. No, not really.
 15 Q. Have you ever had any role in,
 16 you know, development or just -- of a suspicious
 17 order monitoring program of any kind?
 18 MR. LAVELLE: Object to form.
 19 THE WITNESS: My understanding is
 20 the suspicious order monitoring program
 21 is -- relates to the distribution
 22 centers. I've not really had much
 23 involvement in the distribution centers.
 24 BY MR. SIMMER:

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1 Q. Hand you what we've marked as
 2 Palmer Exhibit Number 5.
 3 - - -
 4 (Deposition Exhibit No. Rite
 5 Aid-Palmer-5, Email dated 2008-02-19,
 6 Bates stamped Rite_Aid_OMDL_0046594 and
 7 Rite_Aid_OMDL_0046595, was marked for
 8 identification.)
 9 - - -
 10 BY MR. SIMMER:
 11 Q. While you're looking at that,
 12 I'll identify it for the record as
 13 Rite_Aid_OMDL_0046594 through 46595.
 14 A. Okay.
 15 Q. Have you seen this document
 16 before?
 17 A. Not that I recollect.
 18 Q. It appears to be an email that
 19 you sent to Janet Hart on February 19, 2008.
 20 Do you see that?
 21 A. Yes.
 22 Q. And the subject is "proposed
 23 McKesson response."
 24 Do you see that?

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1 A. Yes.
 2 Q. And then it has an attachment,
 3 "DEA Dosage Report Response.doc."
 4 Do you see that?
 5 A. Yes.
 6 Q. Am I right that the attachment
 7 here is where it says "DEA Dosage Report
 8 Response"?
 9 Do you see that?
 10 A. Yes.
 11 Q. Am I right that that is a
 12 response that you appear to have prepared?
 13 MR. LAVELLE: Object to form.
 14 THE WITNESS: I don't know.
 15 BY MR. SIMMER:
 16 Q. You don't recall having prepared
 17 this?
 18 A. I do not recall.
 19 Q. It appears, though, that you sent
 20 this document to Ms. Hart; is that right?
 21 A. Yes.
 22 Q. I direct your attention to the
 23 first paragraph of the attached document here.
 24 Do you see where it says, "Rite

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1 Aid already has sophisticated tools in place to
2 effectively monitor controlled substance
3 purchases relative to potential diversion"?

4 Do you see that?

5 A. Yes.

6 Q. And what's your understanding
7 what's being said here?

8 MR. LAVELLE: Object to form.

9 THE WITNESS: It appears to be
10 saying just what it does, that we have
11 tools in place to detect controlled
12 substance diversion.

13 BY MR. SIMMER:

14 Q. You have no recollection of
15 having written that; is that right?

16 A. I can't answer just based on this
17 whether I wrote this or was just emailing it to
18 Janet. There's not enough information here for
19 me to determine that.

20 Q. Look at the -- under the first
21 bullet, do you see where it says, "Rite Aid
22 utilizes a proprietary application that monitors
23 all purchases (both" from Rite Aid's own
24 distribution centers and McKesson) of Controlled

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1 THE WITNESS: This would probably
2 be our -- our pharmacy dispensing system
3 and the other corresponding systems that
4 go with it like replenishment are all
5 proprietary. It's not a canned product
6 we purchase.

7 BY MR. SIMMER:

8 Q. And you're familiar with the fact
9 that they -- it is utilized for controlled
10 substances?

11 A. Utilized for controlled
12 substances for what? Are you talking about --

13 Q. It says here that it "monitors
14 all purchases...of Controlled substances."

15 Do you see that?

16 A. Yes.

17 Q. And in fact, is that something
18 you believe is going -- went on with its
19 proprietary application?

20 MR. LAVELLE: Object to form.

21 THE WITNESS: Yes. I believe
22 this is referring to the inventory
23 replenishment piece of the pharmacy
24 system that, as was described previously

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1 substances [REDACTED]

2 [REDACTED]
3 [REDACTED]

4 Do you see that?

5 A. Yes.

6 Q. Can you help us with some of the
7 terminology in this sentence?

8 What is GCSN, do you know?

9 MR. LAVELLE: Object to form.

10 THE WITNESS: GCSN stands for
11 generic code sequence number.

12 BY MR. SIMMER:

13 Q. And what is the generic code
14 sequence number in reference to?

15 A. GCSN is an industry-based number
16 that sort of is a way of grouping like products,
17 is my understanding. That's the best way I can
18 sort of explain that.

19 Q. And this sentence where it's
20 talking about the system that Rite Aid utilizes
21 that is described here as "proprietary
22 application," do you have an understanding of
23 what's being talked about?

24 MR. LAVELLE: Object to form.

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1 with -- relative to one of those blocks,
2 would have that capability.

3 BY MR. SIMMER:

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 MR. LAVELLE: Object to form.

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 BY MR. SIMMER:

21 Q. In the second sentence it goes on
22 to say, "Exceptions are generated for field
23 review and response monthly."

24 What's your understanding of

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1 what's being said there?

2 A. I actually can't recall or I
3 don't know specifically what -- what exceptions
4 they were referring to there.

5 Q. Okay. The third sentence, it
6 says, "By utilizing both Rite Aid distribution
7 center purchases as well as McKesson purchases
8 this application better identifies potential
9 diversion than any reporting from McKesson."

10 Do you have an understanding
11 what's being said there?

12 A. I believe this is referencing the
13 portal application, the Above Average portal
14 application.

15 Q. And it says here this is a better
16 system than just any reporting from McKesson.
17 Right?

18 MR. LAVELLE: Object to form.

19 THE WITNESS: Yes. That would be
20 because it has the ability to see both.
21 McKesson can't see both sides of the
22 fence is what that's referring to.

23 [REDACTED]

24 [REDACTED]

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1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 Q. Look at the second bullet, if you
9 would.

10 A. Uh-huh.

11 Q. Do you see where it says, "Rite
12 Aid also utilizes a Data Mining vehicle called
13 Navistor/Naviscript to monitor multiple key
14 performance indicators related to potential
15 diversion"?

16 Do you see that?

17 A. Yes.

18 Q. There're two different terms used
19 there. I wonder if you could help us understand
20 the difference between them.

21 It says, "Navistor/Naviscript."

22 Is there a difference?

23 A. Yes. A little bit. So
24 Navistor/Naviscript was not a Rite Aid

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1 proprietary product, in the sense that a vendor
2 sort of provided and supported the, you know,
3 functionality there.

4 Navistor came first. Navistor
5 utilized point of sale system feeds to provide,
6 you know, KPIs as a result of things coming from
7 the register-type systems.

8 Naviscript was a sort of -- sort
9 of a different tool -- they're the same company,
10 but Navistor is what was referred to really that
11 original bucket that is front end POS generated.

12 Naviscript is the piece that is
13 drawing data feeds from pharmacy systems versus
14 cash register systems.

15 Q. Who is the vendor that created
16 this Navistor/Naviscript?

17 A. It's on the tip of my tongue. If
18 I heard it, I would know it immediately, but I
19 can't recall it at this exact moment.

20 Q. Is it something the company still
21 utilizes?

22 MR. LAVELLE: Object to form.

23 THE WITNESS: The company still
24 uses Navistor/Naviscript, but I don't

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1 think -- I think it's evolved and
2 changed. I don't think that the -- it's
3 a vendor-based application at this point.

4 BY MR. SIMMER:

5 Q. Now, you say that Navistor
6 utilized a point of sale system. So help me
7 understand what you mean by that.

8 So is Navistor analyzing the
9 actual sales at the pharmacy level?

10 A. Well, Navistor was built less
11 around pharmacy versus Naviscript, which is all
12 about pharmacy.

13 So Navistor would be getting data
14 from the cash register systems. Certainly that
15 would include pharmacy cash registers, but
16 Navistor was not just about pharmacy or pharmacy
17 cash registers. Navistor was really about, you
18 know, the ability to see, you know, transactions
19 occurring at, you know, those cash registers in
20 order to determine, you know, if, for instance --
21 I guess an example would be somebody who's taking
22 an \$18 product, say, whatever, a carton of
23 cigarettes, and they're modifying that price down
24 to \$2 or, you know, applying a coupon that

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1 shouldn't have been applied. So it's those sorts
2 of activities.

3 Q. Do I have it right then that
4 NaviScript would actually see the point of sale
5 transaction on a per-prescription basis?

6 A. Both NaviStor and NaviScript had
7 the ability to see information related to the
8 cash register.

9 Q. You also say in that sentence,
10 "key performance indicators."

11 And you referred to that a moment
12 ago I think as KPI; is that right?

13 A. Yes. KPI is short for key
14 performance indicator.

15 Q. Tell us in your own words what
16 key performance indicators means.

17 A. So a key performance indicator
18 would be a particular attribute or action or
19 activity that could be pulled into NaviStor or
20 NaviScript that would be useful in terms of
21 detecting theft, detecting procedural abuses,
22 detecting policy violations of different sorts or
23 nature, so...

24 Q. I think we understand what you

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1 mean by a theft, but why don't you go ahead and
2 say it again, what you mean when you reference
3 theft.

4 What is that?

5 MR. LAVELLE: Object to form.

6 THE WITNESS: So theft would be a
7 loss of product or inventory that would
8 result in shrink. So when you -- when
9 the books say you have this amount or
10 dollar amount, and the physical inventory
11 reveals that you don't, the difference
12 between the two is shrink.

13 BY MR. SIMMER:

14 Q. You also say that the key
15 performance indicators would be used to detect
16 procedural abuses.

17 What do you mean by that?

18 A. An example -- a procedural abuse
19 would be where something, you know, might be
20 allowable to a certain degree, but, you know, you
21 can see from the KPI that it's being used more
22 than it should be. Coupon abuse would be an
23 example.

24 Q. Finally you said that they could

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1 be -- these key performance indicators could be
2 used to detect policy violations of different
3 sorts or nature.

4 And what do you mean by that?

5 A. So there are lots of policies
6 relative to things you can or cannot do at the
7 cash register, price modifies, voids, things like
8 that.

9 So, you know, an example there
10 would be -- let's say you had a cashier that was
11 sweethearting merchandise to a customer, meaning
12 basically not charging them for it. They could
13 be doing that by voiding certain items in the
14 transaction. And utilizing NaviStor, you could
15 see that maybe you had a particular cashier at a
16 particular store voiding lots of merchandise,
17 which would allow you to look into that and say,
18 okay, we might have an issue here.

19 Q. Now, in the context of the DEA's
20 concerns about controlled drug diversion, how
21 were these key performance indicators used?

22 A. So that's really NaviScript. And
23 it evolved. So NaviScript got better and better
24 and better as we added more KPIs and, you know,

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1 improved it.

2 But key performance indicators,
3 like cycle counts down, order adjustments, DSD
4 orders through telestock, you know, these are all
5 examples of KPIs that could be indicative of drug
6 losses at a store.

7 Q. Again, I think you're talking
8 about shrinkage, though. Right?

9 MR. LAVELLE: Object to form.

10 THE WITNESS: It is shrinkage,
11 but it's certainly also drug diversion,
12 which is what you asked.

13 BY MR. SIMMER:

14 Q. Well, let me go through that and
15 make sure I understand.

16 You said cycle counts down.

17 How does that key performance
18 indicator indicate potential diversion?

19 A. Okay. So in the pharmacy like
20 the front end, there is an inventory -- PI, a
21 perpetual inventory system. So the system should
22 know exactly how much of a given product -- and
23 this is true in the front end or the pharmacy --
24 how much of a given product that store has. So a

<p style="text-align: right;">Page 162</p> <p>1 thief could, for example, realize that if the 2 thief stole X number of product off the shelf, 3 that now is going to indicate that there's -- you 4 know, there's only one there instead of three, 5 which means, you know, product is not going to 6 come in, inventory is not going to be accurate. 7 So in order to potentially try to 8 hide or mask their theft, what they might do is 9 cycle count the product down to where now the 10 system says there's one on the shelf, even though 11 you just stole two. So...</p> <p>12 Q. In that instance, this -- you're 13 concerned about a Rite Aid employee actually 14 altering the system to make that cycle count 15 down. Am I right?</p> <p>16 A. Yes. That would be indicative of 17 internal theft.</p> <p>18 Q. You also mentioned order 19 adjustments as being a key performance indicator 20 of diversion.</p> <p>21 Tell us what you mean by that.</p> <p>22 A. So the way the inventory 23 replenishment system would work is the system 24 would basically use your usage and the on-hand</p>	<p style="text-align: right;">Page 164</p> <p>1 down. And an adjustment up or adjustments up 2 could be -- could be indicative of internal 3 theft.</p> <p>4 Q. Again, this is an indication of 5 internal theft only. Right?</p> <p>6 A. Yes.</p> <p>7 Q. It would not be indicative of any 8 inappropriate prescribing, for example. Right?</p> <p>9 A. Neither of those two KPIs would 10 be indicative of that.</p> <p>11 Q. Were there any KPIs that the 12 company used to identify inappropriate 13 prescribing?</p> <p>14 A. I can't see -- again, I wasn't in 15 this department the entire time, but I cannot see 16 how any NaviStor or NaviScript KPI would be able 17 to do that.</p> <p>18 - - -</p> <p>19 (Deposition Exhibit No. Rite 20 Aid-Palmer-6, Department of Justice News 21 Release, "Rite Aid Corporation and 22 Subsidiaries Agree to Pay \$5 Million in 23 Civil Penalties to Resolve Violations in 24 Eight States of the Controlled Substances</p>
<p style="text-align: right;">Page 163</p> <p>1 numbers to determine what the order should be. 2 So in the old days of pharmacy, 3 you would have to basically walk the shelves and, 4 you know, I want two of this, I want one of this. 5 With a replenishment system, the 6 system knows what you dispensed, it knows what 7 you transferred, returned, those things we talked 8 about. And it knows what you're supposed to have 9 on hand.</p> <p>10 So the system builds the order 11 for you. And, you know, that's -- that's sort of 12 a suggested order. But both in the front end and 13 the pharmacy, you have the ability to adjust 14 orders.</p> <p>15 So a good example -- a good front 16 end example would be, I know that in an upcoming 17 ad, Tylenol PM is on sale. And the system only 18 wants to sell me -- you know, give me four of 19 these, but, you know, I know that I'll have 20 customers wanting Tylenol PM, so I'm going to 21 adjust it from 4 to 10, or something like that.</p> <p>22 Similar in the pharmacy, the 23 order is going to be generated. The pharmacist 24 would have the chance to adjust that order up or</p>	<p style="text-align: right;">Page 165</p> <p>1 Act," 2 pages, was marked for 2 identification.)</p> <p>3 - - -</p> <p>4 BY MR. SIMMER:</p> <p>5 Q. I'll hand you what we've marked 6 as Palmer Exhibit Number 6. Take a moment to 7 review that.</p> <p>8 A. (Reviewing document.)</p> <p>9 Q. While he's looking at it, I'll 10 identify it for the record as a press release 11 from the Department of Justice dated Monday, 12 January 12, 2009.</p> <p>13 A. Okay.</p> <p>14 Q. Do you recall having seen this 15 press release?</p> <p>16 A. I have, yes.</p> <p>17 Q. And this is in reference a 18 settlement that Rite Aid entered into -- excuse 19 me, Rite Aid Corporation and its subsidiaries 20 entered into for \$5 million.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And this settlement actually 24 occurred while you worked in loss prevention.</p>

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1 Right?
 2 MR. LAVELLE: Object to the form.
 3 THE WITNESS: The settlement
 4 occurred?
 5 BY MR. SIMMER:
 6 Q. Yes, sir.
 7 A. That does not mean that the
 8 activities involved in the settlement occurred.
 9 Q. That's right.
 10 The settlement itself occurred
 11 while you were working in loss prevention.
 12 Right?
 13 A. The settlement itself.
 14 Q. Okay. If you look at the third
 15 paragraph, do you see where it says, "According
 16 to information contained in the agreement, the
 17 DEA conducted an investigation of 53 separate
 18 Rite Aid locations starting in 2004. The
 19 investigation revealed a pattern of violations of
 20 the CSA"?
 21 Do you see that?
 22 A. Yes.
 23 Q. And do you see that first bullet,
 24 "At pharmacies in Kentucky and New York, Rite Aid

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1 knowingly filled prescriptions for controlled
 2 substances that were not issued for a legitimate
 3 medical purpose pursuant to a valid
 4 physician-patient relationship"?
 5 Do you see that?
 6 A. Yes.
 7 Q. Do you have an understanding what
 8 was involved in that particular portion of this
 9 settlement?
 10 A. Not all of it, no.
 11 Q. You were a district manager, I
 12 think you said, of pharmacies in Kentucky?
 13 A. Yes.
 14 Q. Were you a district manager of
 15 the Lexington Rite Aid pharmacies?
 16 A. Yes.
 17 - - -
 18 (Deposition Exhibit No. Rite
 19 Aid-Palmer-7, Article from the Lexington
 20 Herald Leader entitled "Rite Aid Pharmacy
 21 deemed central to multi-state drug
 22 probe," 3 pages, was marked for
 23 identification.)
 24 - - -

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1 BY MR. SIMMER:
 2 Q. Hand you what we've marked as
 3 Palmer Exhibit Number 7.
 4 A. Uh-huh.
 5 Q. Take a look at that. And I'll
 6 identify it for the record as an article from the
 7 Lexington Herald Leader dated January 14, 2009.
 8 The headline is "Rite Aid pharmacy deemed central
 9 to multi-state drug probe."
 10 A. Yes.
 11 Q. Are you familiar with the fact
 12 that the Rite Aid pharmacy in Lexington, Kentucky
 13 was central to this settlement in 2009?
 14 MR. LAVELLE: Object to form.
 15 THE WITNESS: When you say
 16 "central," no, I don't know if it was
 17 central. And to be clear on my response
 18 before, this says, "at pharmacies." I
 19 would note that that's plural.
 20 So when you asked before about me
 21 being familiar with these issues, I am
 22 familiar with this one store. I have no
 23 idea what -- you know.
 24 BY MR. SIMMER:

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1 Q. Okay. Well, let's look at the
 2 news article itself.
 3 Do you see in the first paragraph
 4 where it says, "A Rite Aid Corp. store in
 5 Lexington is responsible for more than
 6 three-quarters of the prescription-drug
 7 violations in a multi-state federal
 8 investigation"?
 9 Do you see that?
 10 A. Yes.
 11 Q. Is that something you were aware
 12 of, that this Lexington store was responsible for
 13 three-quarters of the violations in this
 14 particular settlement?
 15 MR. LAVELLE: Object to form.
 16 THE WITNESS: I am familiar with
 17 the Lexington store and the allegations
 18 around the Lexington store.
 19 Three-quarters, one-half, one-fifth,
 20 one-eighth, no.
 21 BY MR. SIMMER:
 22 Q. Any reason to dispute the
 23 accuracy of that statement in this news article?
 24 MR. LAVELLE: Object to form.

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1 THE WITNESS: No.
2 BY MR. SIMMER:
3 Q. Look further on into the article.
4 It would be the fourth paragraph.
5 Do you see where it says, "The
6 investigation revealed 16,000 violations in
7 Kentucky and seven other states"?
8 Do you see that?
9 A. Yes.
10 Q. And look in the next paragraph.
11 "About 12,600 of the violations came from one
12 Lexington Rite Aid from 2001 to August 2005,
13 according to a Department of Justice news
14 release. The store moved from 393 Waller Avenue
15 to 1335 South Broadway."
16 Do you see that?
17 A. Yes.
18 Q. Did I read that correctly?
19 A. You did.
20 Q. And that was a store over which
21 you had managerial responsibility. Right?
22 A. For a period of time, yes.
23 Q. What period of time during the
24 time period that became an issue in this

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1 settlement were you the district manager of this
2 Lexington store?
3 A. Well, going off of this 2001 to
4 August of 2005, probably 2000 -- parts of 2002
5 till 2003.
6 Q. So are we talking at least a year
7 that you were the manager over this store?
8 A. Probably about a year.
9 Q. So as manager of the store, would
10 it be fair to say that the buck stopped with you
11 if something went wrong with one of the stores
12 you were managing?
13 MR. LAVELLE: Object to form.
14 THE WITNESS: I would not say
15 that. And I would also point out that
16 the settlement also clearly states that
17 this is neither an admission of liability
18 nor a concession by Rite Aid.
19 BY MR. SIMMER:
20 Q. So you're saying this did not
21 happen; is that right?
22 MR. LAVELLE: Object to form.
23 THE WITNESS: You're saying what
24 did not happen.

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1 BY MR. SIMMER:
2 Q. You're saying that because the
3 company didn't admit any liability, there's a
4 potential nothing happened at all at this
5 Lexington store that you managed. Right?
6 MR. LAVELLE: Object to form.
7 THE WITNESS: I would say that
8 this location was one of the Lexington
9 locations I supervised for a period of
10 time. I would say that there was issues
11 that later came to light around this
12 particular diet clinic and this
13 particular product, which I also would
14 point out is not an opioid. So I'd like
15 to make that clear, since this is opioid
16 litigation.
17 BY MR. SIMMER:
18 Q. It's a controlled drug, though.
19 Right?
20 A. It is a controlled drug.
21 Q. Any dispute about that, that this
22 was a controlled substance under your watch.
23 Right?
24 MR. LAVELLE: Object to form.

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1 THE WITNESS: It's a controlled
2 substance.
3 BY MR. SIMMER:
4 Q. Did the company penalize you in
5 any way as the district manager for violations at
6 this Lexington store?
7 A. No.
8 Q. Never came up again that you were
9 in any way responsible for what happened at the
10 Lexington store?
11 A. No.
12 Q. What had you done to actually
13 make sure that this Lexington store was complying
14 with the law?
15 MR. LAVELLE: Object to form.
16 THE WITNESS: I can tell you in
17 at least one instance I was in this
18 Lexington store when the state board
19 investigator visited the store and was
20 perfectly okay with the process that they
21 were following in that location.
22 So I had no reason to believe
23 that there was anything going on at this
24 location that in any way could be

<p style="text-align: right;">Page 174</p> <p>1 improper.</p> <p>2 BY MR. SIMMER:</p> <p>3 Q. Turn to the second page of this,</p> <p>4 if you would.</p> <p>5 Last full paragraph on the page.</p> <p>6 And it's somewhat cut off, but I can read a</p> <p>7 portion of it.</p> <p>8 Do you see where it says, "The</p> <p>9 fact that so many prescriptions came from one</p> <p>10 office and that the Rite Aid store checked with</p> <p>11 the corporation about obtaining more phentermine</p> <p>12 were red flags that should have been heeded,'</p> <p>13 said Robin Gwinn, an assistant U.S. attorney"?</p> <p>14 Do you see that?</p> <p>15 A. I do, I do.</p> <p>16 Q. Do you agree with that statement,</p> <p>17 that these were red flags of diversion?</p> <p>18 MR. LAVELLE: Object to form.</p> <p>19 THE WITNESS: Not necessarily.</p> <p>20 BY MR. SIMMER:</p> <p>21 Q. You don't agree with that</p> <p>22 statement.</p> <p>23 Why not?</p> <p>24 MR. LAVELLE: Object to form.</p>	<p style="text-align: right;">Page 176</p> <p>1 prescriptions, but no, I do not agree</p> <p>2 with that.</p> <p>3 BY MR. SIMMER:</p> <p>4 Q. So this news article is wrong.</p> <p>5 Right?</p> <p>6 MR. LAVELLE: Object to form.</p> <p>7 THE WITNESS: It's not</p> <p>8 necessarily wrong. It's not saying what</p> <p>9 you're implying it's saying.</p> <p>10 BY MR. SIMMER:</p> <p>11 Q. So in that opening sentence where</p> <p>12 it says, "A Rite Aid...store in Lexington is</p> <p>13 responsible for more than three-quarters of the</p> <p>14 prescription-drug violations in a multi-state</p> <p>15 federal investigation," you don't think that</p> <p>16 that's a correct statement, do you?</p> <p>17 A. Let me ex --</p> <p>18 MR. LAVELLE: Object to form.</p> <p>19 Objection, asked and answered.</p> <p>20 THE WITNESS: No. I -- I would</p> <p>21 put it this way. All this is saying is</p> <p>22 that three-quarters of the individual</p> <p>23 violations occurred in that particular</p> <p>24 location.</p>
<p style="text-align: right;">Page 175</p> <p>1 THE WITNESS: The fact that the</p> <p>2 location was next to the clinic and that</p> <p>3 the clinic patients chose to go to the</p> <p>4 closest available pharmacy? Would you go</p> <p>5 to the closest available pharmacy?</p> <p>6 BY MR. SIMMER:</p> <p>7 Q. I'm asking you the questions,</p> <p>8 sir. You're not asking questions today.</p> <p>9 A. I answered -- I answered the</p> <p>10 question. Not necessarily.</p> <p>11 Q. Okay. So the company paid</p> <p>12 \$5 million, didn't they?</p> <p>13 A. The company paid \$5 million for</p> <p>14 issues involving 53 different locations, I</p> <p>15 believe.</p> <p>16 Q. Three-quarters of it related to</p> <p>17 the Lexington pharmacy that you were the manager</p> <p>18 of. Right?</p> <p>19 MR. LAVELLE: Object to form.</p> <p>20 Objection, asked and answered.</p> <p>21 THE WITNESS: I do not agree that</p> <p>22 three-quarters of what was settled here</p> <p>23 was relative to this issue. It's</p> <p>24 possible that three-quarters of the</p>	<p style="text-align: right;">Page 177</p> <p>1 That doesn't address the level of</p> <p>2 the violations. That doesn't address</p> <p>3 anything else.</p> <p>4 So I do not believe that that was</p> <p>5 the significant driving issue here.</p> <p>6 BY MR. SIMMER:</p> <p>7 Q. At the time this investigation</p> <p>8 was going on, did the company take you aside and</p> <p>9 say, Mr. Palmer, you were the district manager</p> <p>10 over this store, tell us what happened at this</p> <p>11 store?</p> <p>12 MR. LAVELLE: Object to form.</p> <p>13 THE WITNESS: No, not that I</p> <p>14 recall.</p> <p>15 BY MR. SIMMER:</p> <p>16 Q. You never helped the company, you</p> <p>17 know, understand the nature of the violations</p> <p>18 that happened in Lexington?</p> <p>19 MR. LAVELLE: Object to form.</p> <p>20 THE WITNESS: Not that I recall.</p> <p>21 There were other individuals that would</p> <p>22 have been much more knowledgeable.</p> <p>23 BY MR. SIMMER:</p> <p>24 Q. But you were the district manager</p>

<p style="text-align: right;">Page 178</p> <p>1 in charge of that store for at least a year, I 2 think we said. Right? 3 MR. LAVELLE: Object to the form. 4 Objection, asked and answered. 5 BY MR. SIMMER: 6 Q. Right? 7 A. I was a pharmacy district manager 8 for this location for a portion of the time 9 involved here. 10 Q. And you feel no responsibility at 11 all for what happened at that store in Lexington. 12 Isn't that right? 13 MR. LAVELLE: Object to form. 14 THE WITNESS: I do not. 15 BY MR. SIMMER: 16 Q. Had nothing to do with you. 17 Right? 18 MR. LAVELLE: Object to form. 19 THE WITNESS: I don't understand 20 what you're asking. 21 BY MR. SIMMER: 22 Q. You were the district manager in 23 charge of this store, but you're saying I had no 24 responsibility for what happened there. Right?</p>	<p style="text-align: right;">Page 180</p> <p>1 entitled "Government Affairs DEA Compliance," 2 Bates number Rite_Aid_OMDL_0039845 to 0039923. 3 A. (Reviewing document.) 4 Okay. 5 Q. Have you looked -- seen this 6 document before? 7 A. Yes. 8 Q. When is the last time you saw it? 9 A. During depo preparation. 10 Q. And is it a document that you had 11 a hand in preparing? 12 A. It looks like a portion of it, 13 yes. 14 Q. Can you tell us what this 15 document is? 16 A. This appears to be another one of 17 the regulatory road show presentations. 18 Q. And this one having to do with, I 19 take it, if you look at page 2, the DEA 20 settlement we just looked at. Right? I'm 21 looking at the slide 2. It's 39846. 22 See that? 23 A. Yes. It looks like there's a 24 slide in here that states that, yes.</p>
<p style="text-align: right;">Page 179</p> <p>1 MR. LAVELLE: Object to form. 2 Objection, asked and answered. 3 THE WITNESS: If I didn't know at 4 the time I was the district manager that 5 there were issues that would surface 6 years down the road as an issue, how 7 could I be responsible for it? 8 - - - 9 (Deposition Exhibit No. Rite 10 Aid-Palmer-8, PowerPoint, "Government 11 Affairs DEA Compliance," Bates stamped 12 Rite_Aid_OMDL_0039845 through 13 Rite_Aid_OMDL_0039923, was marked for 14 identification.) 15 - - - 16 BY MR. SIMMER: 17 Q. I'm going to hand you what we 18 have marked as Palmer Exhibit Number 8. And 19 again I apologize, the Bates number is cut off on 20 the bottom of this. 21 A. Yep. 22 Q. For the record, and we'll replace 23 this with the proper Bates number on this, but 24 I'll identify the record as a presentation</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. It says, "Rite Aid & DEA 2 settlement 1/9/2009." 3 See that? 4 A. Yes. 5 Q. This document came with no cover 6 or anything else. 7 Do you remember approximately 8 when you were doing the road show that you would 9 have been giving this presentation? 10 A. Probably 2009. 11 Q. Okay. And you would have gone on 12 this road show for what purpose? 13 A. These would be the same 14 regulatory road shows we talked about earlier. 15 Q. And you were one of the 16 presenters of this particular road show 17 presentation. 18 Is that what you recall? 19 A. I am assuming so, because there's 20 an exception in the back that has my contact 21 information and some of my material. 22 Q. Okay. So when it has your name 23 in it, that's some indicator that you had a hand 24 in preparing the slide deck. Right?</p>

<p style="text-align: right;">Page 182</p> <p>1 A. Yeah. And I recognize some of 2 these slides, too. 3 MR. LAVELLE: Just wait until the 4 question is finished before you answer 5 it, so the record is clear. 6 THE WITNESS: Oh, yep. I'm 7 sorry. 8 BY MR. SIMMER: 9 Q. Look at the third slide that's 10 39847. 11 Do you see that? Do you see 12 where it says "Thank you!" right in the middle of 13 the page? 14 A. Yes. 15 Q. What's meant by that? 16 A. I don't know. 17 Q. It's not being sarcastic at all; 18 is that right? 19 MR. LAVELLE: Object to form. 20 THE WITNESS: I don't know. 21 BY MR. SIMMER: 22 Q. No understanding at all why, in 23 the third slide of a slide deck discussing the 24 \$5 million settlement, someone says "Thank you!"</p>	<p style="text-align: right;">Page 184</p> <p>1 see where it says "Rite Aid DEA Form 106 2 Process"? 3 Do you see that? 4 A. Yes, yes. 5 Q. And what's your understanding the 6 Form 106 process is describing? 7 A. So a Form 106 is the form that 8 has to be filed with the DEA to report a theft or 9 loss of controlled substances. So when it refers 10 to the DEA Form 106 process, that's the Rite Aid 11 process for filing the loss forms. 12 Q. And so that has to do with the 13 theft or loss part of this settlement. Right? 14 What we're talking about, the 106 process? 15 MR. LAVELLE: Object to form. 16 THE WITNESS: I don't know that 17 it has anything to do with the 18 settlement. There's always been -- 19 pre-2009, post-2009, there's always been 20 a DEA Form 106 process. 21 BY MR. SIMMER: 22 Q. So your testimony is you do not 23 recall that as part of this 2009 settlement, the 24 company had to put in place a compliance program.</p>
<p style="text-align: right;">Page 183</p> <p>1 Right? 2 A. It's not my slide. 3 Q. You didn't prepare that slide? 4 A. No. 5 Q. And you know that how? 6 A. Because I know what slides I did 7 and didn't do. This was not my slide. 8 Q. Do you know who prepared that 9 slide? 10 A. No. 11 Q. Look at several slides back. And 12 again, I apologize, the slides themselves aren't 13 numbered, so I'll refer to -- oh, you don't have 14 Bates numbers on it. 15 A. It's okay. 16 Q. The one that says "Compliance 17 Program." That's all it says on the page. 18 There you go. 19 So am I right then that what 20 follows is a description of a compliance program 21 the company is putting in place following this 22 settlement? 23 A. I don't know. 24 Q. Look at the next slide. Do you</p>	<p style="text-align: right;">Page 185</p> <p>1 Right? 2 MR. LAVELLE: Object to form. 3 THE WITNESS: It states in the 4 document you previously gave me that Rite 5 Aid had to put in place a compliance 6 program. 7 BY MR. SIMMER: 8 Q. Well, that's what I'm trying to 9 understand. 10 So this discussion of the 106 11 process, is that part of the compliance program 12 that the company had implemented following this 13 settlement? 14 MR. LAVELLE: Objection, asked 15 and answered. 16 THE WITNESS: I understand the 17 confusion, but the 106 process was not 18 implemented as a result of the 19 settlement. The 106 process existed 20 before. 21 BY MR. SIMMER: 22 Q. So it's a process that already 23 was in place. This is simply going out on your 24 road show and reminding people what the 106</p>

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1 process is.
 2 Do I have it right?
 3 MR. LAVELLE: Object to form.
 4 THE WITNESS: I think that's
 5 correct.
 6 BY MR. SIMMER:
 7 Q. Turn back to -- and again, I
 8 really apologize, this makes it more difficult.
 9 The slide that begins "Loss Prevention Drug Loss
 10 Investigations."
 11 Do you see that? It's quite a
 12 ways into it. I think this -- if I hold this up,
 13 maybe you'll --
 14 A. No. I got it. I got it.
 15 Q. -- see what I'm talking about.
 16 Right there. I think that's it.
 17 A. Yes.
 18 Q. Is that the portion of this
 19 presentation that you had a hand in preparing?
 20 A. Yes.
 21 Q. Because you were working in loss
 22 prevention at that time. Right?
 23 A. Yes.
 24 Q. So just in your own words -- and

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1 we can go through the slide deck, too.
 2 So what changes did you in loss
 3 prevention implement as a result of this 2009
 4 settlement?
 5 A. I don't recall. I'm not sure --
 6 I mean, we were always building out, improving
 7 and evolving our program.
 8 So off of memory, I don't know
 9 that I can attribute any specific things directly
 10 related to that. But certainly the program was
 11 always, you know, evolving and improving.
 12 Q. But in light of this settlement,
 13 it was obvious that there were some -- mistakes
 14 had been made in the company. Right?
 15 MR. LAVELLE: Object to form.
 16 THE WITNESS: That was the
 17 allegation. Correct.
 18 BY MR. SIMMER:
 19 Q. The company paid \$5 million.
 20 They didn't pay it for nothing.
 21 Right?
 22 MR. LAVELLE: Object to form.
 23 THE WITNESS: I can't speculate
 24 on why something was or wasn't paid.

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1 BY MR. SIMMER:
 2 Q. So this portion of the
 3 presentation talking about loss prevention, drug
 4 loss investigations, it's your testimony this is
 5 simply a summary of what was already in place; is
 6 that right?
 7 A. I haven't gone through this
 8 entire deck at this point in time.
 9 Q. And you referred to it a bit ago,
 10 that you had -- this deck refers to you
 11 specifically as someone that these losses are to
 12 be reported to. Right?
 13 A. I'm not -- I think you're -- I
 14 think you're mixing some things up.
 15 Q. Well, let's do this. Let's look
 16 at the slide itself and you can help us
 17 understand what your role was.
 18 A. Yeah. Yeah, let's --
 19 Q. Turn to the slide where it says
 20 "Notification Notes."
 21 A. Yep.
 22 Q. There you are. This is Bates
 23 ending 39899.
 24 A. Yes.

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1 Q. Do you see where it says, "All
 2 drug loss investigations require notification be
 3 provided by the LPM to both your Regional and
 4 Divisional LP Director and Andy Palmer"?
 5 That's you?
 6 A. That's correct.
 7 Q. So what this is saying, if I have
 8 it right, is if there are -- drug loss
 9 investigations are to be -- you are to be
 10 notified. Right?
 11 A. Yes.
 12 Q. What is LPM, by the way?
 13 A. LPM at that point in time
 14 referenced loss prevention manager.
 15 Q. And there was also something
 16 called the divisional LP director?
 17 A. There were both regional LP
 18 directors as well as divisional LP directors.
 19 Q. And the second bullet, you see
 20 where it says, "Any investigation involving a
 21 pharmacist (drug loss or otherwise) also requires
 22 notification be provided to Andy Palmer upon
 23 discovery."
 24 Do you see that?

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1 A. Yes.

2 Q. So are these all investigations

3 involving what you've been talking about as

4 shrinkage?

5 A. There's two separate bullets

6 here. The first bullet, drug loss

7 investigations, the answer there would absolutely

8 be yes. The second -- second part here, not

9 necessarily.

10 Q. It's broader than just shrinkage

11 then?

12 A. That would be a little bit

13 broader.

14 Q. Okay. Would this also include

15 any suspicious orders that you were to be

16 notified about?

17 A. Again, my understanding is

18 suspicious orders is a DC issue, so I don't know

19 how a store or field-level person would be

20 reporting a suspicious order.

21 Q. Okay. So that as part of your

22 obligations, you know, getting notifications of

23 suspicious orders is not one of the things that

24 you do. Right?

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1 A. No, not -- not as a suspicious

2 order, my understanding of what a suspicious

3 order is, no.

4 I would like to clarify earlier.

5 You indicated that all drug

6 losses had to be reported to me based upon this.

7 I would like to clarify that all drug loss

8 investigations, you omitted that word, which is

9 rather significant.

10 Q. Okay. And so tell me what the

11 significance of just saying -- putting the word

12 "investigations" is.

13 A. Because if the drug loss was due

14 to something known, and there, therefore, wasn't

15 going to be a corresponding investigation, there

16 would be no need to notify the investigative

17 body.

18 If, for example, you had -- let's

19 say it's a misfill-type issue, where a pharmacist

20 filled a prescription for 100 tablets of a

21 controlled substance and he thought the bottle

22 was a 100-count bottle and it was a full

23 100-count bottle, but in reality, that particular

24 product came in, say, 120 count, and the

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1 pharmacist realized that he just dispensed 120

2 versus 100. And maybe he calls the customer and

3 says, hey, you know, could you please bring that

4 back, I have made a mistake, or maybe he can't

5 reach the customer, or the customer refuses to

6 bring it back, you would have a loss. You would

7 have a loss of 20. And that loss, you know,

8 might go on a suspected loss form. But there

9 wouldn't be any investigation because the issue

10 is already known.

11 So what this is saying really is

12 that people should not be conducting drug loss

13 investigations without my being aware that

14 they're conducting a drug loss investigation. I

15 realize that's a fine point.

16 Q. That's a good point.

17 So what you're saying is

18 there's a -- there has to be an actual

19 investigation opened for you -- there to be a

20 requirement that you're notified. Right?

21 A. Yes and no. What -- the point we

22 were trying to -- I was trying to get across here

23 in this presentation is, nobody should be

24 conducting a drug loss investigation without the

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1 proper investigative oversight body being aware

2 that they're conducting an investigation.

3 Q. Okay.

4 A. That's really what this was meant

5 to say.

6 Q. Okay. And again, what you're

7 talking about is drug loss. Right? In that

8 first bullet?

9 A. In the first bullet, yes.

10 Q. Okay. And in the second bullet,

11 you say that it could be somewhat broader.

12 And my question is again, I think

13 that -- I -- you know, we got an answer on this,

14 but let me clarify this.

15 Did the second bullet also

16 include notification of any suspicious orders?

17 MR. LAVELLE: Object to form.

18 Objection, asked and answered.

19 THE WITNESS: Yeah. I think -- I

20 think I have already explained, not as my

21 understanding of suspicious orders.

22 BY MR. SIMMER:

23 Q. So you were not to get

24 notification of any suspicious orders.

<p style="text-align: right;">Page 194</p> <p>1 Isn't that fair?</p> <p>2 A. This is discussing</p> <p>3 investigations. But as I understand the</p> <p>4 definition of suspicious order which I provided</p> <p>5 to you, then I think the answer is yes.</p> <p>6 Q. So following this 2009</p> <p>7 settlement, do you know if there was any effort</p> <p>8 by the company to go out and conduct training of</p> <p>9 pharmacists to assist them in how to monitor the</p> <p>10 red flags of diversion?</p> <p>11 A. I know that there were a number</p> <p>12 of actions taken as a result of the settlement.</p> <p>13 I was not directly involved in the settlement,</p> <p>14 so, you know, I obviously just read it right now</p> <p>15 and I do remember that some things were put in</p> <p>16 place, but I don't know that I can recall right</p> <p>17 here, right now what all of those things were.</p> <p>18 Q. So you don't know sitting here</p> <p>19 today whether there was any training of</p> <p>20 pharmacists to assist them in monitoring the red</p> <p>21 flags of diversion. Right?</p> <p>22 A. At this point in time, no.</p> <p>23 Eventually the company, you know, did implement,</p> <p>24 you know, a red flag process and red flag</p>	<p style="text-align: right;">Page 196</p> <p>1 you know if the company endeavored to train</p> <p>2 pharmacists on how to identify altered</p> <p>3 prescriptions?</p> <p>4 A. I don't know that, and I'm not</p> <p>5 even sure how you would do that.</p> <p>6 Q. Any effort by the company</p> <p>7 following the 2009 settlement to identify</p> <p>8 overprescribing by a pill mill?</p> <p>9 A. Repeat the question?</p> <p>10 Q. Was there any training of</p> <p>11 pharmacists about how to identify overprescribing</p> <p>12 by a pill mill physician?</p> <p>13 MR. LAVELLE: Objection to the</p> <p>14 form of the question. It's a different</p> <p>15 question than was asked.</p> <p>16 THE WITNESS: Yeah. I don't know</p> <p>17 the answer, and I don't even know that</p> <p>18 pill mill is a defined term.</p> <p>19 What's your definition of "pill</p> <p>20 mill"?</p> <p>21 BY MR. SIMMER:</p> <p>22 Q. You don't know what that term</p> <p>23 means?</p> <p>24 A. I have an idea of what some</p>
<p style="text-align: right;">Page 195</p> <p>1 training and those types of actions.</p> <p>2 Q. So you do recall that eventually</p> <p>3 the company did implement something, but not as a</p> <p>4 result of this 2009 settlement?</p> <p>5 MR. LAVELLE: Object to form.</p> <p>6 THE WITNESS: The first part was</p> <p>7 correct. The second part I don't know</p> <p>8 the answer to.</p> <p>9 BY MR. SIMMER:</p> <p>10 Q. So you believe, however, that</p> <p>11 there was some kind of a process implemented to</p> <p>12 train pharmacists on the red flags of diversion.</p> <p>13 Right?</p> <p>14 A. There is a red flag process</p> <p>15 today, yes.</p> <p>16 Q. And when did that go into place?</p> <p>17 A. I don't know exactly. I don't</p> <p>18 know. There's probably other people that can</p> <p>19 better answer that.</p> <p>20 Q. So following the 2009 settlement,</p> <p>21 do you know if there was any effort to train</p> <p>22 pharmacists how to identify forged prescriptions?</p> <p>23 A. I don't know the answer to that.</p> <p>24 Q. Following the 2009 settlement, do</p>	<p style="text-align: right;">Page 197</p> <p>1 people think that means, but I don't believe</p> <p>2 that's a defined term.</p> <p>3 Q. What's your understanding the</p> <p>4 term means?</p> <p>5 A. I think certain individuals in</p> <p>6 the media and the press use that term generically</p> <p>7 to prescribe (sic) a medical practitioner that is</p> <p>8 overprescribing, would be my definition.</p> <p>9 Q. You don't agree with that</p> <p>10 definition?</p> <p>11 A. Oh, I didn't say I did or don't</p> <p>12 agree with it.</p> <p>13 Q. That's just your understanding</p> <p>14 how the term is used. Right?</p> <p>15 A. That's my understanding from --</p> <p>16 yes.</p> <p>17 Q. Did the company do any training</p> <p>18 of any kind about how to identify overprescribing</p> <p>19 by a physician?</p> <p>20 A. That would be part of that red</p> <p>21 flags process that we talked about earlier.</p> <p>22 Q. And you think the company has</p> <p>23 implemented at some point. Right?</p> <p>24 A. Yes.</p>

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1 Q. But you don't know when it
2 happened. Right?

3 A. It's been more than a few years,
4 but I -- I could not tell you whether it was 2012
5 or 2013 or exactly. But there -- I'm sure there
6 are others who can answer that.

7 Q. And who would we talk to about
8 that?

9 A. I'd suggest Janet Hart.

10 Q. And you're just guessing about
11 the years when it was put in place. Right?

12 A. I believe it was around 2012, but
13 again, I don't want to affirmatively state that.

14 Q. So the efforts to go out and
15 train Rite Aid pharmacists about the red flags of
16 diversion, did that emanate from any of your
17 compliance responsibilities that you undertook
18 for the company?

19 MR. LAVELLE: Object to form.

20 THE WITNESS: Yeah. I'm not sure
21 what you mean by the word "emanate" in
22 that context.

23 BY MR. SIMMER:

24 Q. Were you in any way responsible

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1 its pharmacists what they were to do if they
2 suspected that physicians were bad actors?

3 MR. LAVELLE: Same objection.

4 THE WITNESS: At some point in
5 time, yes, there was a process
6 implemented that appears to fit that
7 description. I don't know when that was
8 implemented.

9 BY MR. SIMMER:

10 Q. But am I right that it wasn't as
11 a result of this 2009 settlement?

12 A. I can't speak to as whether
13 things were as a result of.

14 Q. I think you referenced it earlier
15 about the diet clinic -- excuse me, the weight
16 loss clinic that was involved with the
17 overprescribing at the Lexington pharmacy.
18 Right?

19 A. Yeah. I don't believe the
20 issue -- overprescribing is your term. But
21 I'm -- I am familiar with the Lexington store and
22 the diet clinic.

23 Q. And what's your understanding the
24 allegations were with regard to that weight loss

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1 for this effort to train the Rite Aid pharmacists
2 about the red flags of diversion?

3 A. Not responsible for training them
4 on the red flag process for diversion, no.

5 Q. So in your compliance role after
6 you left loss prevention, you're saying that
7 this -- the training of pharmacists about red
8 flags, you had no responsibility for that?

9 A. No responsibility --

10 MR. LAVELLE: Object to form.
11 Objection, asked and answered.

12 THE WITNESS: No responsibility
13 for training.

14 BY MR. SIMMER:

15 Q. Following the 2009 settlement, do
16 you know whether the company endeavored to train
17 its pharmacists what they were to do if they
18 suspected that physicians were bad actors?

19 MR. LAVELLE: Object to form.

20 THE WITNESS: Can you repeat that
21 question for me?

22 BY MR. SIMMER:

23 Q. Following the 2009 settlement, do
24 you know whether the company endeavored to train

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1 clinic?

2 MR. LAVELLE: Object to form.
3 Objection, asked and answered.

4 THE WITNESS: I don't even -- I
5 don't know what all of the allegations
6 were. From reading articles, I
7 understand that part of the issue was
8 with whether the prescriber was on site
9 while the prescriptions were being
10 prescribed, which, you know, goes back to
11 my response before, being a -- briefly
12 being the district manager for that
13 location, I don't know how I would know
14 that.

15 BY MR. SIMMER:

16 Q. You don't have an understanding
17 that there are allegations of improper
18 prescribing of phentermine?

19 MR. LAVELLE: Object to form.
20 Objection, asked and answered.

21 THE WITNESS: Yeah, I believe
22 I've just answered that.

23 BY MR. SIMMER:

24 Q. Following the 2009 settlement,

<p style="text-align: right;">Page 202</p> <p>1 was there any effort by -- to train Rite Aid 2 pharmacists that they were to report bad actor 3 doctors to the DEA? 4 MR. LAVELLE: Object to form. 5 Objection, asked and answered. 6 THE WITNESS: There is a process 7 today around reporting prescribers of 8 suspicious activity, but I can't address 9 the rest of that. 10 BY MR. SIMMER: 11 Q. So sitting here today, you don't 12 know whether there was any specific training of 13 Rite Aid pharmacists about reporting bad actor 14 doctors to the DEA? 15 MR. LAVELLE: Object to form. 16 Objection, asked and answered. 17 THE WITNESS: Yeah. I don't 18 know. 19 MR. LAVELLE: Before we do a new 20 document, can we take a break? 21 MR. SIMMER: That's fine. 22 THE VIDEOGRAPHER: Off the record 23 at 2:13 p.m. 24 - - -</p>	<p style="text-align: right;">Page 204</p> <p>1 A. I don't know. 2 Q. Okay. From time to time, did you 3 actually receive copies of the forms, however? 4 MR. LAVELLE: Object to form. 5 THE WITNESS: I don't recall. I 6 saw that form in my deposition prep. 7 Prior to that, I actually don't remember 8 those forms. 9 MR. SIMMER: Before we -- this is 10 a Rite Aid document. And I know you 11 wanted to lodge an objection for the 12 record. 13 MS. DORRIS: I'm sorry. It's a 14 Rite Aid document or McKesson? 15 MR. SIMMER: I'm sorry, McKesson 16 document, excuse me. 17 MS. DORRIS: Okay, yeah. In that 18 case -- 19 MR. SIMMER: This is 20 McKesson_MDL_00628212. Before I hand it 21 to the witness, you wanted to go ahead 22 and lodge your objection. 23 MS. DORRIS: Yeah. I'd like to 24 make a standing objection that none of</p>
<p style="text-align: right;">Page 203</p> <p>1 (A recess was taken from 2 2:13 p.m. to 2:32 p.m.) 3 - - - 4 THE VIDEOGRAPHER: We're back on 5 the record at 2:32 p.m. 6 BY MR. SIMMER: 7 Q. Sir, are you familiar with a -- 8 McKesson forms that are called threshold change 9 request forms? 10 A. Yes. 11 Q. There's also an acronym it goes 12 by, TCR. 13 Are you familiar with that? 14 A. I believe I've heard that term. 15 Q. And when you requested a change 16 to McKesson up through the threshold change 17 process we've been talking about, what role did 18 you have in the completion of the TCR? 19 A. I believe the TCR forms that 20 you're referencing to are strictly a McKesson 21 internal form, so none. 22 Q. So it's their form simply to 23 document what's happening with the change 24 request; is that right?</p>	<p style="text-align: right;">Page 205</p> <p>1 the McKesson documents being used today 2 were provided to McKesson in advance. 3 McKesson has previously tried to 4 accommodate plaintiffs, but we object to 5 the continued violation of the protective 6 order. And if it continues to occur, we 7 reserve our right to seek relief, 8 including having this testimony 9 stricken -- McKesson reserves its right 10 to seek relief, including having the 11 testimony stricken. 12 MR. SIMMER: Again, as stated in 13 the CMO 2, paragraph 33, the only time 14 written permission is required is if 15 confidential information is being used 16 solely for the purpose of the litigation. 17 And then it lists certain exceptions to 18 that written requirement, including H, 19 that any individual who authored, 20 prepared or previously reviewed or 21 received the information as an exception 22 to the written requirement. 23 We did give them to you in 24 advance, too, so...</p>

<p style="text-align: right;">Page 206</p> <p>1 MS. DORRIS: I would say that's</p> <p>2 not McKesson's understanding of the</p> <p>3 protective order.</p> <p>4 And do you mean, was it the</p> <p>5 advance notice over the lunch break?</p> <p>6 MR. SIMMER: The advance notice</p> <p>7 is only required is if the witness is not</p> <p>8 someone who has already been copied on or</p> <p>9 received the information.</p> <p>10 MS. DORRIS: That's not</p> <p>11 McKesson's understanding.</p> <p>12 MR. SIMMER: Objection noted.</p> <p>13 - - -</p> <p>14 (Deposition Exhibit No. Rite</p> <p>15 Aid-Palmer-9, Email chain, top one dated</p> <p>16 October 02, 2008, Bates stamped</p> <p>17 McKesson_MDL_00628212, 2 pages, was</p> <p>18 marked for identification.)</p> <p>19 - - -</p> <p>20 BY MR. SIMMER:</p> <p>21 Q. So we're handing you what we've</p> <p>22 marked as Rite Aid-Palmer Exhibit Number 9.</p> <p>23 MS. DORRIS: I'd also like to</p> <p>24 make a standing objection to the extent</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. Who is that?</p> <p>2 A. She works for McKesson.</p> <p>3 Q. And what was her role, if you</p> <p>4 know?</p> <p>5 A. I really can't speak to her, you</p> <p>6 know, title or role. She was one of the contact</p> <p>7 points I had for McKesson.</p> <p>8 Q. Do you see in her email where she</p> <p>9 says, "Please see the attached CSMP report for</p> <p>10 September"?</p> <p>11 A. Yes.</p> <p>12 Q. What's your understanding that</p> <p>13 report is that she's referring to?</p> <p>14 A. Controlled substance monitoring</p> <p>15 report.</p> <p>16 Q. And that's a report you got each</p> <p>17 month. Right?</p> <p>18 A. I don't know if this report was</p> <p>19 something I got each month throughout this entire</p> <p>20 process, but, yes, it's a monthly report.</p> <p>21 Q. Okay. And she says in here, "You</p> <p>22 have several stores that" have "reached their</p> <p>23 threshold. Please let us know how you would like</p> <p>24 us to handle."</p>
<p style="text-align: right;">Page 207</p> <p>1 that these McKesson exhibits do not have</p> <p>2 Bates numbers or confidentiality</p> <p>3 designations. We're going to make the</p> <p>4 standing objection that Rite Aid's</p> <p>5 counsel made in regards to replacing</p> <p>6 them.</p> <p>7 MR. SIMMER: Very good. And</p> <p>8 we're going to be swapping in the ones</p> <p>9 with the Bates number. I'll identify it</p> <p>10 for the record as MCKMDL00628212 through</p> <p>11 628213.</p> <p>12 MR. LAVELLE: I think my previous</p> <p>13 statement was clear, but my standing</p> <p>14 objection also relates to the McKesson</p> <p>15 documents being used without Bates</p> <p>16 numbers and confidentiality.</p> <p>17 BY MR. SIMMER:</p> <p>18 Q. Have you had a chance to review</p> <p>19 this document?</p> <p>20 A. Yes.</p> <p>21 Q. So the email string starts with</p> <p>22 an email from Melissa Evangelista.</p> <p>23 Do you know who that is?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 209</p> <p>1 Do you see that?</p> <p>2 A. Uh-huh.</p> <p>3 Q. So --</p> <p>4 MR. LAVELLE: You need to answer</p> <p>5 it yes, no, I don't know.</p> <p>6 THE WITNESS: Oh, yes, yes.</p> <p>7 MR. SIMMER: Thank you, John.</p> <p>8 BY MR. SIMMER:</p> <p>9 Q. And so when she flagged something</p> <p>10 like this, that starts the process we've been</p> <p>11 talking about in terms of the CSMP threshold</p> <p>12 review. Right?</p> <p>13 A. That's not normally -- no, not</p> <p>14 normally how this process worked, from my</p> <p>15 recollection.</p> <p>16 Q. It normally comes from the</p> <p>17 pharmacy district manager to you. Right?</p> <p>18 A. Yes, that's correct.</p> <p>19 Q. So in this instance, it came from</p> <p>20 McKesson flagging this issue. Right?</p> <p>21 A. Yes.</p> <p>22 Q. And then your -- and that email</p> <p>23 is dated Monday, September 29, 2008.</p> <p>24 Do you see that?</p>

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1 A. Yes.

2 Q. And then you respond to her on

3 Thursday of that week, October 2, 2008.

4 Do you see that?

5 A. Yes.

6 Q. In your response you say,

7 "Melissa, Store 1459 needs a 20% threshold

8 increase on base code Oxycodone. The location is

9 experiencing a significant increase in script

10 count and maxed out in September. Please add 20%

11 to this."

12 Do you see that?

13 A. Yes.

14 Q. Can you tell us what's going on

15 here?

16 A. There's not enough information

17 here to really exactly know. There's not really

18 enough information.

19 Q. Okay. Well, first of all, we

20 looked up 1459. It's a Rite Aid pharmacy in --

21 we believe in Zanesville, Ohio.

22 A. Uh-huh.

23 Q. Does that seem correct?

24 A. I would -- I don't have --

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1 Q. No reason to dispute it, however?

2 A. No reason to dispute.

3 Q. Okay. You say that they need a

4 20 percent threshold increase.

5 How did you arrive at the

6 20 percent calculation?

7 A. That's the part where there's not

8 enough information here. So, you know, there's a

9 significant gap -- you know, the 29th through

10 Thursday the 2nd. One of the possibilities is

11 that, you know, we contacted some of the stores

12 on that list.

13 The other possibility is separate

14 to sending the CSMP report, the PDM may actually

15 have sent something to us, based upon the fact

16 that it's the end of the month, so... Yeah.

17 Q. That's not reflected in this

18 email string, is it?

19 A. It's not. It's not.

20 Q. Okay. And it could be a separate

21 email string that's just not captured here; is

22 that right?

23 A. That would be possible.

24 Q. Okay. But all we know is that

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1 you're requesting a 20 percent increase.

2 And what would you have done in

3 order to come up with a 20 percent increase as

4 being the right number to request?

5 MR. LAVELLE: Object to form.

6 THE WITNESS: Contacted the PDM.

7 BY MR. SIMMER:

8 Q. And the PDM would tell you what

9 the pharmacy needs?

10 A. The PDM would provide the --

11 basically let me know what's going on business

12 reason wise and what would be an appropriate

13 increase. In this case, this location is

14 experiencing a significant increase in script

15 count. That would refer to that organic growth

16 that I was talking about earlier.

17 Q. Fair to say that's business need

18 that's being described there. Right?

19 A. Organic growth would be business

20 need.

21 Q. In a situation like this, what

22 would you do to validate that this was a

23 justifiable need that the pharmacy had?

24 MR. LAVELLE: Object to form.

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1 THE WITNESS: In a case of

2 organic growth, if a PDM indicated a

3 store was experiencing significant

4 organic growth, I could go into the

5 system and verify that the store is in

6 fact trending upward, that they do in

7 fact have organic growth.

8 BY MR. SIMMER:

9 Q. And the system that you're using

10 to validate that is the same system we talked

11 about earlier. Right?

12 A. Yes. It's -- yes. It's the

13 various access pathways into the data that

14 resides in the proprietary pharmacy system.

15 Q. And there's nothing in that

16 proprietary system, as we talked about earlier,

17 that would have identified inappropriate

18 prescribing as being the driver of that

19 significant increase in script count, is there?

20 A. What I would be looking at is the

21 script growth percent increase, how many scripts

22 filled per week. So that would not necessarily

23 indicate that.

24 Q. It's not that it's not

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1 necessarily. There's no way to -- you're just
2 looking at a raw number. Right?

3 MR. LAVELLE: Object to form.

4 THE WITNESS: Script growth
5 numbers, yes.

6 BY MR. SIMMER:

7 Q. You don't have any idea what the
8 driver for that script growth is. Right?

9 MR. LAVELLE: Object to form.

10 THE WITNESS: In the case of
11 organic script growth, no.

12 BY MR. SIMMER:

13 Q. It's fair to say that you were
14 satisfied there were no concerns with this
15 pharmacy 1459's orders being suspicious?

16 MR. LAVELLE: Object to form.

17 THE WITNESS: Can you repeat the
18 question?

19 BY MR. SIMMER:

20 Q. Is it fair to say that you were
21 satisfied that there were no concerns with this
22 pharmacy 1459's orders being suspicious?

23 A. That is correct.

24 Q. Hand you what we've marked as

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1 Palmer Exhibit 10. I'll identify it for the
2 record as MCKMDL00628110.

3 - - -

4 (Deposition Exhibit No. Rite
5 Aid-Palmer-10, Email chain, top one dated
6 08 Dec 2008, Bates stamped MCKMDL00628110
7 and MCKMDL00628111, was marked for
8 identification.)

9 - - -

10 BY MR. SIMMER:

11 Q. And it's a multi-page exhibit.

12 The last page is 628111.

13 Do you see where there's an email

14 to you from Evangelista -- or, excuse me, Melissa
15 Evangelista, dated December 8, 2008?

16 A. Yes.

17 Q. And again, she's sending you this
18 CSMP report.

19 Do you see that?

20 A. Yes.

21 Q. And you respond a short time
22 later, approximately 15 or 17 minutes later.

23 "Mike, Melissa, Any word on the Temp changes on"
24 the "base code Hydrocodone for December only? If

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1 no way to do" dis -- "systematic perhaps you can
2 do the temp bump as soon as they hit 80% on this
3 report? I will be on vacation the 11th-15th so
4 hoping we can have this planned for by then."

5 Do you see that?

6 A. Yes.

7 Q. Can you tell us what's going on
8 here?

9 A. So as we discussed a little bit
10 earlier, certain products generally came from our
11 Rite Aid warehouses and not McKesson. At this
12 time hydrocodone products would come from the
13 Rite Aid warehouse, not McKesson. So the stores
14 generally did not order their hydrocodone from
15 McKesson. What would occur and could occur
16 periodically from time to time -- and I addressed
17 it earlier in one of the business reasons we
18 talked about -- are supply chain type issues.

19 So if you had a store -- well,
20 all of our stores that were getting their
21 hydrocodone product from our distribution center,
22 therefore, their thresholds for the McKesson
23 program would be extremely low, because as we
24 also discussed before, McKesson would not know

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1 about the DC purchases.

2 What appears to be happening here
3 is that in December of 2008, our supply chain was
4 unable to provide hydrocodone products or certain
5 hydrocodone products. Therefore, as opposed to a
6 unique single store issue, you rather have an
7 issue that goes more broadly across your entire
8 network.

9 Q. So in that instance, you use this
10 TCR process to request a temporary adjustment
11 across all your stores. Right?

12 A. Yes. A temporary adjustment.
13 The idea -- the concept of the temporary
14 adjustment is there's a supply issue right now.
15 These frequently occurred at the end of the year,
16 so December is not a surprise to me. But there
17 is a supply chain issue. We don't want to input
18 a permanent increase because eventually our
19 warehouse will be back in stock. So, rather, we
20 need to implement a temporary increase so the
21 stores can get their product from McKesson.

22 Q. Is it fair to say that you were
23 satisfied that this phar -- these pharmacies had
24 a valid need for this temporary adjustment?

<p style="text-align: right;">Page 218</p> <p>1 A. I would have no reason to believe 2 otherwise. 3 Q. And that you were also satisfied 4 there were no concerns with any of the orders 5 being suspicious? 6 A. I would have no reason to believe 7 so. 8 - - - 9 (Deposition Exhibit No. Rite 10 Aid-Palmer-11, Email chain, top one dated 11 Feb 16 06, Bates stamped MCKMDL00536012 12 and MCKMDL00536013, was marked for 13 identification.) 14 - - - 15 BY MR. SIMMER: 16 Q. Hand you what we've marked as 17 Palmer Exhibit Number 11. I'll identify it for 18 the record as document MCKMDL00536012 through 19 536013. 20 And I'll represent the redactions 21 were the portion of the email string on which Mr. 22 Palmer was not a party. 23 A. Yes. 24 Q. So if you look at the email that</p>	<p style="text-align: right;">Page 220</p> <p>1 problem we were just talking about in the last 2 exhibit? 3 A. Yes. 4 Q. What's your understanding what's 5 going on here? 6 A. That the outage or availability 7 issue we initially had hoped would resolve sooner 8 than it did, and it did not. So it continued 9 onward into February. I think, as it's phrased 10 here, "continued outs." 11 - - - 12 (Deposition Exhibit No. Rite 13 Aid-Palmer-12, Email chain, top one dated 14 19 Aug 2009, Bates stamped MCKMDL00627812 15 through MCKMDL00627814, was marked for 16 identification.) 17 - - - 18 BY MR. SIMMER: 19 Q. Hand you what we've marked as 20 Rite Aid-Palmer Exhibit 12. Identify for the 21 record as MCKMDL00627812 through 00627813 -- 22 excuse me, strike that. 23 To 627814. 24 A. (Reviewing document.)</p>
<p style="text-align: right;">Page 219</p> <p>1 begins the string, it's again from Ms. 2 Evangelista to you and a group of other 3 individuals dated February 13, 2009. 4 Do you see that? 5 A. Yes. 6 Q. And again, she's forwarding you 7 the CSMP report. 8 Do you see that? 9 A. Yes. 10 Q. That's that monthly report we've 11 been talking about. Right? 12 A. Yes. 13 Q. And you respond to -- her email 14 was Friday, February 13, 2009, and you respond 15 the following Monday, February 16, 2009. 16 Do you see that? 17 A. Yes. 18 Q. And you respond, "After 19 discussing with Rx Operations I need the 20 following due to continued outs issues with the 21 DC's on Hydrocodone." 22 Do you see that? 23 A. Yes. 24 Q. Is that related to the same</p>	<p style="text-align: right;">Page 221</p> <p>1 Okay. 2 Q. I direct your attention to the 3 email that starts this string on the second page 4 of the exhibit that's 627813. 5 And it's from Jack E. Phillipson. 6 It's hard to see the "to" line in here, but there 7 is in the body of the email, it says, "Andy, can 8 you remove the block on the listed items for 9 3367?" 10 You also see -- the formatting is 11 hard to follow, but it looks to be a request that 12 was sent up to you from Mr. Phillipson for an 13 increase. 14 Do you know who he is, Mr. 15 Phillipson? 16 MR. LAVELLE: Object to form. 17 THE WITNESS: Yeah. I guess -- 18 first off, I agree with you, this is -- I 19 really can't follow this either. 20 To your question, though, 21 regarding Jack Phillipson, Jack 22 Phillipson was a PDM. 23 BY MR. SIMMER: 24 Q. The format that I can follow, and</p>

<p style="text-align: right;">Page 222</p> <p>1 maybe you will as well, is the bottom of the 2 first page your email back to him, dated 3 January -- or July 24, 2009. 4 Do you see that? 5 A. Uh-huh. I do. 6 Q. And if you read what you say, 7 it's over on the next page, you say, "As a 8 reminder I cannot remove threshold limits I can 9 only change them. In order to increase a 10 threshold you need to send me the base code you 11 need adjusted (Oxycodone) for the store, the 12 business reason why" you "are using more and the 13 percentage increase you are requesting (ie 10%, 14 20%, et cetera)." 15 Do you see that? 16 A. Yes. 17 Q. This is what I think you talked 18 about earlier, that if there was a process issue 19 where the PDM came in and requested a change that 20 didn't follow the process, your response might be 21 to go back and say I can't approve it unless you 22 give me this information. 23 Am I reading that correctly? 24 A. Yes. That they didn't --</p>	<p style="text-align: right;">Page 224</p> <p>1 Q. Excuse me. August 19, 2009? 2 A. Yes. 3 Q. And he says, "Andy, Please 4 increase 3367's Oxycodone/APAP," then some 5 numbers, and then also "Oxycodone/APAP" and then 6 some numbers "by 25%." 7 What's he requesting here? 8 A. A couple things here. Again, 9 this document is kind of -- I notice below it 10 refers to Jack E. Phillipson, and then the next 11 communication is John E. Phillipson. I'm not 12 sure why that is, but it's interesting to note or 13 I would note that he's listing two specific 14 medications, when I've already explained to him 15 that this is done by base code. 16 But basically what he's doing is 17 he's listing two medications within the oxycodone 18 base code that he's asking for a 25 percent 19 increase on. And the business reason he has 20 listed here is that the store received a pour of 21 1,100 last year and has -- as a result has been 22 running out basically two thirds of the way 23 through the month. 24 Q. And we talked about that term</p>
<p style="text-align: right;">Page 223</p> <p>1 sometimes they didn't understand the process, and 2 yes, this is clarifying this is how it works. 3 Q. And you go on to say, "I can then 4 request the increase in threshold. This process 5 and procedure has been in place almost a full 6 year (in answer" to your -- "(in answer your rphs 7 question)." 8 Do you see that? 9 A. Yes. 10 Q. So you're just telling him this 11 has been a process that's been in place a long 12 time. Right? 13 A. Yes. 14 Q. And this is the McKesson process. 15 Right? 16 A. Yes. 17 Q. So he responds the following 18 Wednesday, if I have -- actually, it's sometime 19 later. There's a gap in time. 20 So your email was July 24th. He 21 responds to you on August 19, 2009. 22 Do you see that? 23 MR. LAVELLE: Object to form. 24 BY MR. SIMMER:</p>	<p style="text-align: right;">Page 225</p> <p>1 "pour" earlier. That's when the -- there's been 2 another store acquired and that business has been 3 acquired; is that right? 4 MR. LAVELLE: Object to form. 5 Objection, asked and answered. 6 THE WITNESS: Yes. 7 BY MR. SIMMER: 8 Q. And that's the example or what 9 he's giving as an explanation for this threshold 10 increase. Right? 11 A. Yes. 12 Q. And then you respond with an 13 email later that same day, actually five minutes 14 later, to Ms. Evangelista, copying Michael 15 Oriente. And you see where you say, "Melissa, 16 Please increase base code oxycodone at store 3367 17 by 25% based on the PDM's request below. Please 18 let me know when complete." 19 Do you see that? 20 A. Yes. 21 Q. If I could, can I direct your 22 attention to the attached form as well. It's the 23 last page of the exhibit. 24 Do you see the heading at the top</p>

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1 of this -- and this is Bates 627814.
 2 Do you see the heading at the top
 3 of this "RNA-Threshold Change/Level 1 Form"?
 4 A. Yes.
 5 Q. Do you know what "RNA" stands
 6 for?
 7 A. No.
 8 Q. Do you know what "threshold
 9 change/level 1" stands for?
 10 A. No. This is an internal McKesson
 11 document.
 12 Q. Do you see where it says under
 13 "Customer Name," "RITE AID 3367"?
 14 Do you see that?
 15 A. Yes.
 16 Q. And that 3367 is the number
 17 convention for -- that Rite Aid used at least at
 18 this time for its pharmacies. Right?
 19 A. Yes.
 20 Q. And then right below that do you
 21 see where it says "Address: 14610 Harvard
 22 Avenue, Cleveland, Ohio"?
 23 Do you see that?
 24 A. Yes.

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1 Q. And it says, "Corporate Contact
 2 Name: Andy Palmer." That's you. Right?
 3 A. Yes.
 4 Q. Would that be an indication you
 5 were the one that had forwarded this requested
 6 threshold increase --
 7 MR. LAVELLE: Objection.
 8 BY MR. SIMMER:
 9 Q. -- to McKesson?
 10 MR. LAVELLE: Object to form.
 11 THE WITNESS: This is not -- this
 12 is a McKesson internal form. However,
 13 the email certainly indicates that I
 14 submitted the request, as per the process
 15 we've discussed many times.
 16 BY MR. SIMMER:
 17 Q. And then over -- in the next
 18 block where "Provide Economost number,
 19 Description or Base Code, Dosage amount or
 20 percentage."
 21 Do you see this "CS requested:
 22 9143"?
 23 Under -- any understanding what
 24 that number is?

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1 MR. LAVELLE: Object to form.
 2 THE WITNESS: Yeah. I don't know
 3 what "economost number" is. I'm familiar
 4 with the term "base code," but I don't
 5 specifically know what -- again, it's an
 6 internal McKesson document.
 7 BY MR. SIMMER:
 8 Q. 9143 is not significant to you
 9 either?
 10 A. I believe it would be a base
 11 code, would be my...
 12 Q. And then over to the right, do
 13 you see where it says "amount 25%"?
 14 A. Yes.
 15 Q. That matches up with what we saw
 16 on your email where you're requesting a
 17 25 percent increase. Right?
 18 MR. LAVELLE: Object to form.
 19 THE WITNESS: I can't -- I would
 20 certainly think so, but again, off my --
 21 I don't know for sure what 9143
 22 represents. I think the email, which is
 23 our method of communicating, more clearly
 24 answers your question.

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1 BY MR. SIMMER:
 2 Q. So the process that Rite Aid
 3 followed in requesting threshold increases of
 4 McKesson was this process of you sending an email
 5 to your counterparts at McKesson, and then they
 6 would go through whatever process they had for
 7 approving the threshold increase; is that right?
 8 A. Yeah. I cannot speak to what
 9 McKesson did, but the first part of that, yes,
 10 this is how our process worked.
 11 Q. If you would also look at the
 12 email that Ms. Evangelista sends to Michael
 13 Oriente -- and who is he, by the way?
 14 A. Michael Oriente was another
 15 employee of McKesson.
 16 Q. Did he have some role in
 17 threshold increase approvals?
 18 A. Yes. Michael was part of the
 19 McKesson program. He was one of my points of
 20 contact.
 21 Q. For these kinds of threshold
 22 increases?
 23 A. Yes.
 24 Q. She says in her email, "Hi

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1 Michael, Please see the attached TCR form to
 2 support the requested increase request. Thank
 3 you."
 4 And you're copied on that email.
 5 Do you see that?
 6 A. Yes.
 7 Q. Hand you what we've marked as
 8 Palmer Exhibit 13.
 9 - - -
 10 (Deposition Exhibit No. Rite
 11 Aid-Palmer-13, Email chain, top one dated
 12 19 Aug 2009, 4 pages, was marked for
 13 identification.)
 14 - - -
 15 BY MR. SIMMER:
 16 Q. Simply to close out this request,
 17 do you see that email that was sent -- let's go
 18 back to -- Ms. Evangelista's email was sent to
 19 Michael Oriente on Wednesday, August 19, 2009.
 20 And then a short time later the same day, you see
 21 at the top of this email string, Mr. Oriente says
 22 "Completed."
 23 Do you see that?
 24 MR. LAVELLE: Object to form.

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1 THE WITNESS: I see that.
 2 BY MR. SIMMER:
 3 Q. And you're copied on that email.
 4 Right?
 5 A. Yes.
 6 Q. And what's your understanding of
 7 what Mr. Oriente meant when he said "completed"?
 8 MR. LAVELLE: Object to form.
 9 THE WITNESS: That it was
 10 completed.
 11 BY MR. SIMMER:
 12 Q. That the TCR had been approved?
 13 A. Again, TCR is a McKesson internal
 14 nomenclature. I would say that the threshold
 15 increase process, whatever it is that they need
 16 to do on the back end, has been completed.
 17 - - -
 18 (Deposition Exhibit No. Rite
 19 Aid-Palmer-14, Email chain, top one dated
 20 25 Oct 2010, Bates stamped MCKMDL00629074
 21 and MCKMDL00629075, was marked for
 22 identification.)
 23 - - -
 24 BY MR. SIMMER:

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1 Q. I hand you what we've marked as
 2 Palmer Exhibit 14. I'll identify it for the
 3 record as MCKMDL00629074 through 629075.
 4 A. (Reviewing document.)
 5 Okay.
 6 Q. Take a look. This email string
 7 begins with an email from Jenna Nichols.
 8 Do you know who that is?
 9 A. Jenna is another employee of
 10 McKesson.
 11 Q. That's someone you had had -- a
 12 point of contact for you in these situations.
 13 Right?
 14 A. Yeah. At some point in time,
 15 Jenna was also a point of contact.
 16 Q. This is an email dated October
 17 25, 2010.
 18 Do you see that?
 19 A. Yes.
 20 Q. And she says, "Hi Team, Please
 21 see the attached daily CSMP report for Rite Aid."
 22 Do you see that?
 23 A. Yes.
 24 Q. Are these reports always -- have

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1 they always been daily like this?
 2 A. I do not believe so.
 3 Q. So is this a change now that it's
 4 a daily report?
 5 MR. LAVELLE: Object to form.
 6 THE WITNESS: I can't answer
 7 that.
 8 BY MR. SIMMER:
 9 Q. And you respond later that same
 10 day, actually seven minutes later, to an email to
 11 Janet Hart, Owen McMahon, Karen Staniforth and
 12 copying Robert Oberosler.
 13 Are those all Rite Aid employees?
 14 A. Yes.
 15 Q. And you have "Importance: High."
 16 Do you see that?
 17 A. Yes.
 18 Q. When you put "Importance: High"
 19 on an email that you're sending to folks in the
 20 company, what did you mean by that?
 21 A. That it's important.
 22 Q. It's out of the ordinary, they
 23 should respond quickly. Right?
 24 MR. LAVELLE: Object to form.

<p style="text-align: right;">Page 234</p> <p>1 THE WITNESS: That it's</p> <p>2 important.</p> <p>3 BY MR. SIMMER:</p> <p>4 Q. Do you see where you say,</p> <p>5 "Through October 24th we have now have 46</p> <p>6 locations at or near Oxycodone threshold limits.</p> <p>7 This rises exponentially as end of month</p> <p>8 approaches. At this rate I would predict between</p> <p>9 200-300 stores to be impacted by months end"? </p> <p>10 Do you see that?</p> <p>11 A. Uh-huh, yes.</p> <p>12 Q. Do you also see where you go on</p> <p>13 to say, "I think this is at least partially being</p> <p>14 driven by shifts from OxyContin (new formulation)</p> <p>15 to generic Oxycodone IR (I have no solid proof</p> <p>16 just a theory)"?</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Tell us what you had surmised</p> <p>20 from what was going on here.</p> <p>21 A. Well, I think the next sentence,</p> <p>22 you know, really clarifies what was happening</p> <p>23 here, which is a recall had been done on specific</p> <p>24 oxycodone products. This is another example of</p>	<p style="text-align: right;">Page 236</p> <p>1 the field to corporate to the field to corporate.</p> <p>2 So I think I need to change my</p> <p>3 last answer to I don't know, because now in</p> <p>4 looking at the response, I'm not sure if this was</p> <p>5 a point in time when she was in corporate or when</p> <p>6 she was in the field. Now that I look clearer at</p> <p>7 her response, that response more likely indicates</p> <p>8 to me that she was in pharmacy operations in</p> <p>9 corporate, because this is expressing her</p> <p>10 familiarity with the recall.</p> <p>11 Q. So am I right that this looks</p> <p>12 like she's a decision-maker on this particular</p> <p>13 issue. Right?</p> <p>14 MR. LAVELLE: Object to form.</p> <p>15 THE WITNESS: She's providing</p> <p>16 information on this particular issue,</p> <p>17 which I probably was not aware of</p> <p>18 originally.</p> <p>19 BY MR. SIMMER:</p> <p>20 Q. What do you mean, you were</p> <p>21 probably not aware of originally?</p> <p>22 A. The recall.</p> <p>23 Q. So when you sent your email to</p> <p>24 the folks that you sent on Monday, October 25th,</p>
<p style="text-align: right;">Page 235</p> <p>1 where, you know, when the stores -- when there's</p> <p>2 a recall on the product, the product gets</p> <p>3 returned, but the McKesson threshold process</p> <p>4 would have no visibility into that product being</p> <p>5 returned. So what appears to have happened here</p> <p>6 is there was a recall of these OxyContin</p> <p>7 products. That's resulting in the stores having</p> <p>8 to order more product. And they were bumping up</p> <p>9 against thresholds, which is, once again, why the</p> <p>10 temporary process was being looked at.</p> <p>11 Q. And you get a response from Karen</p> <p>12 Staniforth.</p> <p>13 Who is that?</p> <p>14 A. Today or back then?</p> <p>15 Q. At that time.</p> <p>16 A. At that time, Karen Staniforth</p> <p>17 was a field leader out in the organization.</p> <p>18 Q. Do you see where she responds,</p> <p>19 "Temp increases for October and November as the</p> <p>20 recall extends through November 19th"?</p> <p>21 Do you see that?</p> <p>22 A. Again, actually, I want to</p> <p>23 clarify my last answer, because Karen held a</p> <p>24 bunch of different positions. And she went from</p>	<p style="text-align: right;">Page 237</p> <p>1 you didn't know there had -- was a recall in</p> <p>2 place.</p> <p>3 Is that what you're saying?</p> <p>4 MR. LAVELLE: Object to form.</p> <p>5 THE WITNESS: It appears to me</p> <p>6 the reason why I'm sending it to this</p> <p>7 particular audience is I'm trying to</p> <p>8 understand or confirm if there's a</p> <p>9 purchasing-supply-chain-type issue that's</p> <p>10 causing this, and Karen appears to -- we</p> <p>11 probably had a phone conversation</p> <p>12 discussion in here as well. But Karen is</p> <p>13 basically affirming on email that there</p> <p>14 is in fact a supply chain issue involved</p> <p>15 here.</p> <p>16 BY MR. SIMMER:</p> <p>17 Q. And do you see in the next email</p> <p>18 on this string three minutes later, after Ms.</p> <p>19 Staniforth's email to you, you forward this on to</p> <p>20 Michael Oriente and tell him or ask him, excuse</p> <p>21 me, "Is this agreeable? Andy." Right?</p> <p>22 A. Yes.</p> <p>23 Q. So what is it you're asking here?</p> <p>24 A. For temporary increases on the</p>

<p style="text-align: right;">Page 238</p> <p>1 base code that's involved here.</p> <p>2 Q. And you see his response a bit</p> <p>3 later that same day, "Can you call me? This</p> <p>4 should not be a problem, I just want to get the</p> <p>5 details so I get it right."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall having this phone</p> <p>9 conversation with Mr. Oriente about this?</p> <p>10 A. I do not recall the particular</p> <p>11 phone conversation.</p> <p>12 Q. Do you know whether this</p> <p>13 particular temporary increase was approved?</p> <p>14 A. I do not. I have no reason to</p> <p>15 believe it wouldn't have been, but I do not.</p> <p>16 Q. So in this particular temporary</p> <p>17 increase, there was a business need in order to</p> <p>18 make the increase. Right?</p> <p>19 A. Yes.</p> <p>20 Q. It's fair to say that you were</p> <p>21 satisfied that these pharmacies indeed had a</p> <p>22 valid need for this temporary increase. Right?</p> <p>23 MR. LAVELLE: Object to form.</p> <p>24 THE WITNESS: I would have no</p>	<p style="text-align: right;">Page 240</p> <p>1 Q. And then he says, the subject</p> <p>2 line is, "Rite Aid CSMP Oxycodone accounts that</p> <p>3 have NOT had any increases."</p> <p>4 A. Yes.</p> <p>5 Q. Do you see in his email he says,</p> <p>6 "Andy, These are the stores that never had an</p> <p>7 increase"?</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have an idea or a</p> <p>11 recollection of what the situation was?</p> <p>12 A. This appears to tie back to the</p> <p>13 previous referenced exhibit.</p> <p>14 Q. In what way?</p> <p>15 A. So the other exhibit ended with</p> <p>16 Mike Oriente asking me to call him on October 25,</p> <p>17 2010. He's wanting to understand details around</p> <p>18 this. And I think there's really two things</p> <p>19 involved here. Number one is the recall of the</p> <p>20 OxyContin product. But number two, as you see</p> <p>21 here, I made a speculation in my email here that</p> <p>22 now makes much more sense, which is the move from</p> <p>23 OxyContin to oxycodone IR. That would have a</p> <p>24 huge impact on thresholds within the base code.</p>
<p style="text-align: right;">Page 239</p> <p>1 reason to believe otherwise.</p> <p>2 BY MR. SIMMER:</p> <p>3 Q. Okay. It's also fair to say that</p> <p>4 you were satisfied that there were no concerns</p> <p>5 with these pharmacies' orders being suspicious.</p> <p>6 Right?</p> <p>7 A. I would have no reason to believe</p> <p>8 that the orders were suspicious.</p> <p>9 - - -</p> <p>10 (Deposition Exhibit No. Rite</p> <p>11 Aid-Palmer-15, Email chain, top one dated</p> <p>12 30 Nov 2010, Bates stamped MCKMDL00628996</p> <p>13 and MCKMDL00628997, was marked for</p> <p>14 identification.)</p> <p>15 - - -</p> <p>16 BY MR. SIMMER:</p> <p>17 Q. I hand you what we've marked as</p> <p>18 Palmer Exhibit 15. Take a moment to review it.</p> <p>19 I'll identify it for the record as MCKMDL00628996</p> <p>20 through 628997.</p> <p>21 Do you see the email that begins</p> <p>22 this string from Mr. Oriente to you dated</p> <p>23 November 30, 2010?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 241</p> <p>1 So we don't have the in-between conversation, but</p> <p>2 I think that these are related.</p> <p>3 Q. Do you see later that same day,</p> <p>4 actually six minutes later, you respond, "Wow.</p> <p>5 Can we input these?"</p> <p>6 A. Yes.</p> <p>7 Q. What are you saying?</p> <p>8 MR. LAVELLE: Object to form.</p> <p>9 THE WITNESS: I think -- again,</p> <p>10 the shift from OxyContin, which is a</p> <p>11 long-acting form, so you would -- with a</p> <p>12 long-acting medication, you would take</p> <p>13 fewer units. And the shift that was</p> <p>14 speculated on here was a shift within the</p> <p>15 industry to go from, you know,</p> <p>16 longer-acting tablets to the</p> <p>17 shorter-acting product.</p> <p>18 The problem as it impacts these</p> <p>19 thresholds and how the threshold process</p> <p>20 was designed is, if you were on the</p> <p>21 longer-acting product, your dose would</p> <p>22 be, say, two tablets a day, one in the</p> <p>23 morning, one in the evening. The move to</p> <p>24 the shorter-acting product would mean</p>

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1 your dosing might be three tablets every
2 four hours.
3 Well, that's a change from
4 two units a day to 12 units a day. The
5 overall milligrams might not change, but
6 the threshold goes by units.
7 So it appears to me that there
8 was some conversation about these issues
9 and the challenges and, you know, that
10 Michael basically put together a bit of a
11 spreadsheet to try and help alleviate
12 that. And I took a look at it and,
13 correspondingly, the effort was to make
14 some kind of adjustment.
15 BY MR. SIMMER:
16 Q. Did you have an understanding of
17 which product was more subject to addiction
18 abuse, short acting or long acting?
19 A. I think they both would be
20 subject to abuse.
21 Q. You don't have an understanding
22 that the short acting is the one that the addicts
23 prefer?
24 A. No. Because you can bust the

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1 long acting open with a hammer and, voila, you've
2 got short acting, so that doesn't make sense to
3 me. That's my opinion. That would make no
4 sense.
5 Q. In response, Mr. Oriente asks
6 you, "Do you want 20, 30, 40 or 50% increase?"
7 Do you see that?
8 A. Yes.
9 Q. And then you respond a short time
10 later, "I think we did 50% on round 1. Can we do
11 that for this group?"
12 Do you see that?
13 A. Yes.
14 Q. Okay. What are you talking about
15 here?
16 A. So if I recall the way we handled
17 this issue -- so we obviously have two
18 significant issues impacting thresholds within
19 this base code. We've got a recall, but more
20 importantly, we've got a shift driving more
21 units, not necessarily more drug but more units.
22 You would not handle that
23 issue -- or I would suggest not handling that
24 issue by blanket increasing every single store,

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1 because why do a threshold increase on a store
2 that, despite these things, may not need the
3 additional product. That would be, to me, not
4 the right approach.
5 So instead, it would make more
6 sense to -- you know, realizing you've got this
7 problem, to put the increase in on stores that
8 are actually hitting that problem and that issue.
9 And I think that's what this speaks to.
10 Q. So you see his response back
11 to you later that same day, yes, where he says,
12 "Andy," I -- or "just updated 102 stores for
13 Oxycodone."
14 Do you see that?
15 A. Yes.
16 Q. So what he seems to be
17 indicating, that McKesson just updated the
18 threshold limits for oxycodone, that's the
19 generic version, for 102 stores. Right?
20 MR. LAVELLE: Object to form.
21 THE WITNESS: That's a base code.
22 That's not -- again, base -- I would
23 disagree with your characterization of it
24 as the generic version, because base code

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1 includes all products, all versions.
2 Other than that, you're correct.
3 BY MR. SIMMER:
4 Q. Fair point.
5 But he does indicate that he
6 approved your request to increase the threshold
7 by 50 percent for these 102 stores. Right?
8 MS. DORRIS: Object to form.
9 THE WITNESS: I didn't
10 specifically ask that I can tell for 102
11 stores. But, yes, it would appear that
12 based upon information I don't have as
13 far as how many stores, that based upon
14 the report, he inputted increases for the
15 stores on the report. I'm assuming that
16 was 102, but I can't verify that because
17 I don't have a spreadsheet in front of
18 me. But I would assume that that is 102.
19 BY MR. SIMMER:
20 Q. So the string begins at 10:00 in
21 the morning on November 30th. And by what looks
22 like 4:27 in the afternoon, the thresholds have
23 been increased for these 102 stores. Right?
24 A. That appears to be correct.

<p style="text-align: right;">Page 246</p> <p>1 Q. So far as your role in this, you 2 were satisfied that these pharmacies had a valid 3 need. Right?</p> <p>4 A. I would have no reason to believe 5 otherwise.</p> <p>6 Q. Did you actually do any 7 investigation at all to determine that was an 8 accurate statement?</p> <p>9 A. No, not in 102 stores.</p> <p>10 Q. Is it also fair to say that you 11 satisfied yourself that there were no concerns 12 with these pharmacies' orders being suspicious?</p> <p>13 A. I would have had no reason to 14 believe that these orders were suspicious.</p> <p>15 Q. And, again, you did no 16 investigation at all to determine that, did you?</p> <p>17 MR. LAVELLE: Object to form.</p> <p>18 THE WITNESS: This is an 19 industry-wide issue, potentially 20 impacting every single Rite Aid store, 21 not a singular-type issue like we 22 discussed with other issues.</p> <p>23 - - -</p> <p>24 (Deposition Exhibit No. Rite</p>	<p style="text-align: right;">Page 248</p> <p>1 code Oxycodone here and its only the 25th. Can 2 we look at these locations and do an initial 3 increase on any that did not get one? Andy."</p> <p>4 A. Yes.</p> <p>5 Q. What are you saying?</p> <p>6 A. This goes back to what I was 7 saying before is, as opposed to doing what would 8 be the wrong thing, in applying blanket 9 adjustments to stores relative to the shift that 10 resulted in, you know, the unit increases we 11 discussed, it made -- makes more sense to wait to 12 see if stores are running into the issue or 13 hitting those thresholds and then adjust them at 14 that time. So that's really what's being 15 represented here.</p> <p>16 Q. Mr. Oriente responds to you on 17 that same day, just about an hour-and-a-half 18 later, roughly.</p> <p>19 A. Uh-huh.</p> <p>20 Q. "Any the" -- I think he means 21 Andy, but that says, "Any these would be the 22 stores that are highlighted over 90%. The rest 23 are below 90% but also have never received an 24 increase. Do you want just the highlighted or</p>
<p style="text-align: right;">Page 247</p> <p>1 Aid-Palmer-16, Email chain, top one dated 2 25 Mar 2011, Bates stamped MCKMDL00629858 3 and 629859, was marked for 4 identification.)</p> <p>5 - - -</p> <p>6 BY MR. SIMMER:</p> <p>7 Q. Hand you what we've marked as 8 Palmer Exhibit 16. We'll identify it for the 9 record as Bates MCKMDL00629858 through 629859.</p> <p>10 A. Okay.</p> <p>11 Q. Do you see the email string 12 begins with an email from Jenna Nichols at 13 McKesson to you and a group of individuals on 14 Friday, March 25, 2011?</p> <p>15 A. Yes.</p> <p>16 Q. Do you see she says, "Hi Team, 17 Please see the attached daily CSMP report for 18 Rite Aid. Let me know if we need to make any 19 adjustments to the current thresholds"?</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And you respond at 3:57 that same 23 day, so in the afternoon that day, "Mike, Jenna, 24 We have quite a few locations at 90% plus on base</p>	<p style="text-align: right;">Page 249</p> <p>1 all to get the 50% increase?"</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have an understanding what 5 he's asking here?</p> <p>6 A. There's a corresponding 7 spreadsheet. What he's asking is to take a look 8 at the spreadsheet. You know, some are at 9 90 percent as of the 25th. There are others at 10 perhaps 89 percent, 88 percent, 79.5 percent. So 11 his question is, are we going to just adjust the 12 90 percent or the 88 percent, the 89 percent, the 13 87 percents as well.</p> <p>14 Q. And you respond a short time 15 later, seven minutes later, "Can you get all in 16 for us? Andy."</p> <p>17 A. Yes.</p> <p>18 Q. What's your response mean?</p> <p>19 MR. LAVELLE: Object to form.</p> <p>20 THE WITNESS: It goes back to the 21 previous question. So as opposed to just 22 doing the 90 percent, yes, take care of 23 the 89 percent, the 88.5 percent one as 24 well.</p>

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1 BY MR. SIMMER:

2 Q. You want all of them increased.
3 Right?

4 A. The ones that were reflected in
5 the spreadsheet, yes.

6 Q. And then Mr. Oriente responds a
7 short time later, "Completed. Jenna, please
8 attach this file to a TCR and send to me on
9 Monday. Thank you."

10 It appears that he's saying that
11 this threshold increase of 50 percent for this
12 group of stores had been approved. Right?

13 A. Yes. It looks like he approved
14 it.

15 Q. It actually looks like it is
16 approved and completed before the TCR form had
17 been filled out. Right?

18 MS. DORRIS: Objection.

19 THE WITNESS: Again, I'm not
20 familiar with this whole internal
21 McKesson process or TCR or -- I'm
22 familiar with our, you know, process, not
23 what happens on the back end at McKesson.

24 BY MR. SIMMER:

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1 here --

2 MR. LAVELLE: Object to form.

3 BY MR. SIMMER:

4 Q. -- in order to approve this
5 threshold increase?

6 MR. LAVELLE: Same objection.

7 THE WITNESS: Yes. Again, these
8 are not, you know, individual store
9 issue. These are industry-wide issues
10 that are causing the problem here.

11 BY MR. SIMMER:

12 Q. Hand you what we've marked as
13 Palmer Exhibit Number 17.

14 - - -

15 (Deposition Exhibit No. Rite
16 Aid-Palmer-17, Email chain, top one dated
17 31 Mar 2011, Bates stamped
18 MCKMDL00627679, was marked for
19 identification.)

20 - - -

21 BY MR. SIMMER:

22 Q. I'll identify it for the record
23 as MCKMDL00627679.

24 A. Okay.

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1 Q. So tell us everything you did to
2 investigate whether these stores in fact needed
3 the increase -- strike that.

4 Tell us everything you did to
5 investigate whether there was a valid need to
6 justify this increase.

7 MR. LAVELLE: Object to form.

8 THE WITNESS: Yeah. The business
9 increase would be the issues we were
10 already aware of.

11 BY MR. SIMMER:

12 Q. It's fair to say that you
13 satisfied yourself there were no concerns with
14 these pharmacies' orders being suspicious?

15 A. We would have no reason to
16 believe these orders were suspicious.

17 Q. And just looking at how long this
18 process took, starts at 9:46 a.m. on the morning
19 of Friday, March 25th, and it's been approved by
20 late in the day that same day. Right?

21 A. Yes.

22 Q. So am I right that there really
23 hadn't been much in the way of an investigation
24 beyond what you already thought was going on

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1 Q. So this is an email that begins
2 with Jenna Nichols' email dated March 31, 2011 to
3 you and a group of other individuals.

4 She says, "Hi Team, Please see
5 the attached daily CSMP report for Rite Aid."

6 Do you see that?

7 A. Yes.

8 Q. This is the same kind of email
9 we've been seeing that time and time again is
10 starting this process. Right?

11 A. Yes.

12 Q. And then you respond at 9:15 a.m.
13 on March 31st. I think that's a time zone
14 difference, but I'm not sure why it seems like --
15 it looks like you responded before she sent the
16 email.

17 But in any event, you say in your
18 email, "Mike, Jenna, 480 locations on here. That
19 means over 10% of our locations hit or came close
20 to a block of some sort this month. Can" you
21 "take another look at ones that made it on here
22 that have never had" an "initial bump again?
23 Andy."

24 A. Yes.

<p style="text-align: right;">Page 254</p> <p>1 Q. What are you saying?</p> <p>2 MR. LAVELLE: Object to form.</p> <p>3 THE WITNESS: That all of these</p> <p>4 exhibits all tie to each other. This is</p> <p>5 this -- more of the same of what we</p> <p>6 talked about here.</p> <p>7 And again, we could have</p> <p>8 implemented the increase across all 6,000</p> <p>9 stores at one time, in which case it</p> <p>10 would appear that -- you know, that</p> <p>11 wouldn't, in your view, be an issue. I</p> <p>12 think the more responsible approach was</p> <p>13 to not input increases across 6,000</p> <p>14 locations and only deal with locations as</p> <p>15 the issue is being reflected, because the</p> <p>16 end result is far fewer locations are</p> <p>17 going to receive an increase.</p> <p>18 BY MR. SIMMER:</p> <p>19 Q. Do you see Jenna's email to you</p> <p>20 later that same day, do you see where she says,</p> <p>21 "Andy, Please see the attached file of stores</p> <p>22 that have not been increased. Please keep in</p> <p>23 mind that there is only one more ordering day</p> <p>24 left for the month of March. There were 2 more</p>	<p style="text-align: right;">Page 256</p> <p>1 3:32 p.m. to 3:56 p.m.)</p> <p>2 - - -</p> <p>3 THE VIDEOGRAPHER: We're back on</p> <p>4 the record at 3:56 p.m.</p> <p>5 BY MR. SIMMER:</p> <p>6 Q. Sir, we went through a series of</p> <p>7 exhibits looking at threshold increases across a</p> <p>8 number of Rite Aid stores before we took our</p> <p>9 break. Right?</p> <p>10 A. Yes.</p> <p>11 Q. Is it fair to say that in</p> <p>12 approving those threshold increases, you</p> <p>13 satisfied yourself that nothing about them was in</p> <p>14 any way related to the opioids epidemic happening</p> <p>15 in America at the time?</p> <p>16 A. I had no reason --</p> <p>17 MR. LAVELLE: Object to form.</p> <p>18 THE WITNESS: -- to believe so.</p> <p>19 No reason to believe so.</p> <p>20 BY MR. SIMMER:</p> <p>21 Q. Okay. Did you do anything to</p> <p>22 investigate to make sure that that was not</p> <p>23 anything that was driving the utilization, the</p> <p>24 increase?</p>
<p style="text-align: right;">Page 255</p> <p>1 ordering days this month than average months,</p> <p>2 which resulted in more stores hitting their</p> <p>3 thresholds. I can submit an increase for the</p> <p>4 attached stores if you need it. Please let me</p> <p>5 know what percentage you would like to increase</p> <p>6 these thresholds? Thank you, Jenna Nichols"?</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. This is where the email string</p> <p>10 stops.</p> <p>11 Do you know whether this in fact</p> <p>12 was approved?</p> <p>13 A. Without -- I would need -- I</p> <p>14 would need -- the answer is no, I would need more</p> <p>15 of the email string or something to refresh my</p> <p>16 recollection.</p> <p>17 MR. SIMMER: Can we take a short</p> <p>18 break?</p> <p>19 MR. LAVELLE: Yeah.</p> <p>20 THE WITNESS: We can.</p> <p>21 THE VIDEOGRAPHER: Off the record</p> <p>22 at 3:32 p.m.</p> <p>23 - - -</p> <p>24 (A recess was taken from</p>	<p style="text-align: right;">Page 257</p> <p>1 MR. LAVELLE: Object to form.</p> <p>2 THE WITNESS: The particular</p> <p>3 increases that we were discussing</p> <p>4 previous to the break, there was an</p> <p>5 industry-wide issue, paradigm shift that</p> <p>6 we believed was driving those increases.</p> <p>7 BY MR. SIMMER:</p> <p>8 Q. Nothing related to the epidemic.</p> <p>9 Right?</p> <p>10 A. Not that I would necessarily</p> <p>11 believe is directly related to -- to...</p> <p>12 Q. Again, just to clarify, what did</p> <p>13 you actually do to confirm that that wasn't in</p> <p>14 any way a driving force behind these increases?</p> <p>15 A. If -- if the increases was the</p> <p>16 first-time increase after the industry changes</p> <p>17 that we talked about, the recall and the shift to</p> <p>18 short-acting product, then the -- you know, the</p> <p>19 assumption was that that was the driver for those</p> <p>20 increases.</p> <p>21 There are also points in those</p> <p>22 things where the reiteration is, had the increase</p> <p>23 already been done, so if subsequent increases</p> <p>24 would have come in, those would have been handled</p>

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1 differently.
 2 - - -
 3 (Deposition Exhibit No. Rite
 4 Aid-Palmer-18, Email dated December 03,
 5 2008, Bates stamped MCKMDL00628183, was
 6 marked for identification.)
 7 - - -
 8 BY MR. SIMMER:
 9 Q. Hand you what we've marked as
 10 Palmer-18. I'll identify it for the record as
 11 MCKMDL00628183.
 12 A. Okay.
 13 Q. Do you see your email of December
 14 3, 2008, to Melissa Evangelista. Right?
 15 A. Yes.
 16 Q. And she works for McKesson.
 17 Right?
 18 A. At that time she did. I can't
 19 confirm that she works there now, but yes.
 20 Q. And the other two individuals,
 21 we've identified one already, Michael Oriente, as
 22 a McKesson employee at the time. Right?
 23 A. Yes.
 24 Q. And what about Michael Musson?

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1 A. Mike Musson was employed by Rite
 2 Aid.
 3 Q. And what was his job?
 4 A. Mike was a -- an analyst. I
 5 believe the term we used at that point in time
 6 was a data miner.
 7 Q. An analyst in what department?
 8 A. In the loss prevention
 9 department.
 10 Q. Did he work under you?
 11 A. He did.
 12 Q. Do you see where you say in your
 13 email, "Melissa, Please increase threshold on
 14 base code Oxycodone at store 3151 by 20%.
 15 Location is seeing increased business from a
 16 local pain clinic. Let me know when in. Andy"?
 17 Do you see that?
 18 A. Yes. Yes, I do.
 19 Q. Can you tell us what your --
 20 what's going on here?
 21 A. It's 2008, which is ten years
 22 ago, so I don't specifically recall, other than
 23 it appears to fit the parameters of how, you
 24 know, these increases were done, needed a

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1 percentage, a valid business reason and so forth.
 2 Q. We've looked and 3151 is a
 3 pharmacy located in Akron, Ohio.
 4 Do you have any reason to dispute
 5 that?
 6 MR. LAVELLE: Object to form.
 7 THE WITNESS: I have no reason to
 8 believe you're incorrect in that.
 9 BY MR. SIMMER:
 10 Q. And you say that you'd like to
 11 increase by 20 percent.
 12 Any idea what would have gone on
 13 to lead you to conclude to raise it by
 14 20 percent?
 15 A. A conversation with the pharmacy
 16 district manager or an email.
 17 Q. Okay. And you say that the
 18 location is seeing increased business from a
 19 local pain clinic.
 20 A. Yes.
 21 Q. Would that be the kind of thing
 22 that would be a justification for an increase in
 23 the threshold?
 24 A. It could be. Increased business

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1 from a local pain clinic, cancer treatment
 2 center, new physician, yes.
 3 Q. So tell us everything you would
 4 do in a situation like this when you got a
 5 request for a threshold increase that is being
 6 driven by a particular medical provider?
 7 MR. LAVELLE: Object to form.
 8 THE WITNESS: At this point in
 9 time?
 10 BY MR. SIMMER:
 11 Q. Yes, sir.
 12 A. Okay. This was 2008. The
 13 program was brand new. And at this point in
 14 time, I don't know that we would have done
 15 anything other than probably affirming that the
 16 script growth is in fact, you know, increasing by
 17 about the percentage that's being requested.
 18 Q. What program are you talking
 19 about?
 20 A. The McKesson threshold program.
 21 We discussed earlier that that was implemented in
 22 2008.
 23 Q. You say it was new at this point
 24 in time.

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1 Is there some reason why you
2 believe it may have changed over time?
3 MS. DORRIS: Object to form.
4 MR. LAVELLE: Object to form.
5 THE WITNESS: I think, you know,
6 the program got better and was a learning
7 experience throughout, as any program
8 should be, of any sort.
9 BY MR. SIMMER:
10 Q. Is it fair to say that you
11 wouldn't have made a request like this unless you
12 were satisfied that pharmacy 3151 had a valid
13 need for this threshold increase?
14 A. I would not have, you know,
15 requested the increase if I had reason to believe
16 that there was no business need.
17 Q. Is it fair to say that you were
18 satisfied that there were no concerns with 3151's
19 orders being suspicious?
20 A. I would not have submitted the
21 increase or have any reason to believe that the
22 orders were suspicious.
23 Q. Hand you what we've previously
24 marked as Novack Exhibit 8. I'll identify it for

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1 the record as a press release from the Department
2 of Justice dated October 20, 2014, the title of
3 which says, "Akron Doctor Pleads Guilty to
4 Illegally Prescribing Painkillers."
5 Do you see that?
6 A. Yes.
7 Q. Are you familiar with Dr. Adolph
8 Harper?
9 A. No.
10 Q. Never heard the name before?
11 A. Not that I recall.
12 Q. Are you familiar with the pain
13 clinic that he ran in Akron, Ohio?
14 A. Not that I recall.
15 Q. Familiar with the fact that he
16 was a gynecologist?
17 A. No.
18 Q. Familiar with the fact that his
19 patients filled prescriptions at pharmacy 3151?
20 A. No.
21 Q. Take a look at the first
22 paragraph.
23 Do you see where it says, "An
24 Akron physician pleaded guilty to illegally

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1 prescribing hundreds of thousands of doses of
2 painkillers and other pills to customers for no
3 legitimate medical purpose, even after he learned
4 some customers had died from overdose-related
5 deaths, law enforcement officials said"?
6 Do you see that?
7 MR. LAVELLE: Object to form.
8 THE WITNESS: Yes.
9 BY MR. SIMMER:
10 Q. Ever heard of that before?
11 A. No.
12 Q. Look at the fifth paragraph. Do
13 you see where it says, "Together" -- and that's
14 in reference to Dr. Harper and several others --
15 "they distributed hundreds of thousands of doses
16 of prescription medications -- including
17 OxyContin, Percocet, Roxicet, Opana and others --
18 from Adolph Harper's medical offices in Akron
19 between 2009 and 2012, according to...
20 documents" -- excuse me -- "according to court
21 documents"?
22 Do you see that?
23 MR. LAVELLE: Object to form.
24 THE WITNESS: I do. That's not

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1 what it says, though.
2 BY MR. SIMMER:
3 Q. It doesn't say that?
4 A. You said from Adolph Harper's
5 medical officers -- or you said offices. The
6 word here is "officers."
7 Q. Thank you for that correction. I
8 think that may be a typo in the actual press
9 release. I don't think it means officers, but
10 with that correction.
11 Have you heard of this before,
12 that between 2009 and 2012, that these
13 individuals were illegally filling -- or writing
14 prescriptions for OxyContin, Percocet, Roxicet,
15 Opana and others?
16 A. No, I'm not familiar with this.
17 I also would point out, and maybe
18 this is an error as well, but it says they were
19 distributed -- the doses were distributed from
20 Adolph Harper's -- assuming you are correct,
21 offices. So they're saying that these were
22 distributed from his offices, they were handed
23 out at his office, is that what they're saying?
24 Q. I think they're actually

<p style="text-align: right;">Page 266</p> <p>1 referring to the prescriptions themselves, not 2 the drug. 3 A. So it's inaccurate. 4 MR. LAVELLE: Objection to the 5 form. Objection. 6 BY MR. SIMMER: 7 Q. I don't know whether it's 8 inaccurate. 9 Let's look at the indictment and 10 see what the indictment said. I'll hand you what 11 we've previously marked as Novack Rite Aid 12 Exhibit 7. 13 A. So I don't need this one? 14 MR. LAVELLE: No. 15 BY MR. SIMMER: 16 Q. I'll identify it for the record 17 as a pleading dated March 25, 2014 from the 18 Northern District of Ohio, Eastern Division, 19 captioned United States of America, Plaintiff, 20 vs. Adolph Harper, Jr., Adria Harper, Patricia 21 Laughman and Tequilla Berry, Defendants. 22 Indictment Case Number 5:14CR096. 23 Do you see that? 24 A. Yes.</p>	<p style="text-align: right;">Page 268</p> <p>1 HARPER, PATRICIA LAUGHMAN and Tequilla Berry, the 2 defendants herein, and others known and unknown 3 to the Grand Jury, did unlawfully, knowingly and 4 intentionally combine, conspire, confederate and 5 agree together and with each other, and with 6 diverse others known and unknown to the Grand 7 Jury to knowingly and intentionally distribute 8 and dispense oxycodone, oxymorphone, methadone, 9 amphetamines, Schedule II controlled substances; 10 buprenorphine and hydrocodone, Schedule III 11 controlled substances, and alprazolam and 12 zolpidem, Schedule IV controlled substances, 13 outside the usual course of professional practice 14 and not for a legitimate medical purpose, 15 contrary to and in violation of Title 21, United 16 States Code sections 841(a)(1), (b)(1)(C), 17 (b)(1)(E), (b)(2) and 846"? 18 Do you see that? 19 MR. LAVELLE: Object to form. 20 THE WITNESS: Yes. 21 BY MR. SIMMER: 22 Q. Did you ever hear of that before? 23 MR. LAVELLE: Object to form. 24 THE WITNESS: Not that I recall.</p>
<p style="text-align: right;">Page 267</p> <p>1 Q. Do you see in the very first 2 paragraph, where it says, and I'll quote, "From 3 on or about September 1, 2009, and continuing 4 through on or about May 18, 2012, the defendants 5 ADOLPH HARPER, JR., ADRIA HARPER, PATRICIA 6 LAUGHMAN, TEQUILLA BERRY and others 7 (collectively, the 'HARPER DRUG TRAFFICKING 8 ORGANIZATION' or 'HARPER DTO') agreed to 9 illegally distribute hundreds of thousands of 10 doses of prescription painkillers to customers 11 located in the Northern District of Ohio and 12 elsewhere"? 13 Do you see that? 14 MR. LAVELLE: Object to form. 15 THE WITNESS: Yes, I see that. 16 BY MR. SIMMER: 17 Q. Direct your attention to 18 paragraph 21 on page 8. 19 Do you see where it says, and 20 I'll quote, "Beginning at least on or about 21 September 1, 2009, and continuing through on or 22 about May 18, 2012, the exact dates to the Grand 23 Jury unknown, in the Northern District of Ohio, 24 Eastern Division, ADOLPH HARPER, JR., ADRIA</p>	<p style="text-align: right;">Page 269</p> <p>1 BY MR. SIMMER: 2 Q. Look at paragraph 24. Do you see 3 where it says, and I'll quote, "It was further 4 part of the conspiracy that ADOLPH HARPER, JR. 5 pre-signed blank prescription forms, and ADRIA 6 HARPER, LAUGHMAN, and BERRY completed 7 prescription information for customers and 8 distributed 'prescriptions' to the customers, 9 anticipating that the customers would fill the 10 'prescriptions' at a pharmacy and receive 11 controlled substances"? 12 You see that? 13 MR. LAVELLE: Object to form. 14 THE WITNESS: Yes. 15 BY MR. SIMMER: 16 Q. Look at paragraph 27. "It was 17 further part of the conspiracy that ADOLPH 18 HARPER, JR., continued to distribute 19 'prescriptions' for controlled substances after 20 he learned that some of his customers had died 21 from overdose-related deaths." 22 See that? 23 MR. LAVELLE: Object to form. 24 THE WITNESS: Yes.</p>

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1 MR. LAVELLE: Move to strike this
2 entire reading of a document that the
3 witness has said he has no familiarity
4 with. Counsel is just reading paragraphs
5 of a document that the witness knows
6 nothing about. It's a total waste of
7 time and I move to strike it.
8 MR. SIMMER: Objection noted.
9 BY MR. SIMMER:
10 Q. Look at paragraph 29.
11 "It was further part of the
12 conspiracy that ADOLPH HARPER, JR., distributed,
13 'prescriptions' to customers after conducting a
14 cursory examination of the customer and often
15 without examining the customer."
16 See that?
17 MR. LAVELLE: Object to form.
18 THE WITNESS: Yes.
19 BY MR. SIMMER:
20 Q. Look at paragraph 31.
21 "It was further part of the
22 conspiracy that the HARPER DTO posted...ADOLPH
23 HARPER, JR.'S 'medical' office a list of
24 pharmacies that were likely to fill ADOLPH HARPER

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1 JR.'s customers' 'prescriptions.'"
2 Do you see that?
3 MR. LAVELLE: Object to form.
4 THE WITNESS: Yes.
5 BY MR. SIMMER:
6 Q. In conducting the investigation
7 and approving the threshold increase that we just
8 looked at for pharmacy 3151, did you do anything
9 to validate what the pain pharmacy -- excuse me,
10 the pain practice was that was driving the
11 increase?
12 MR. LAVELLE: Objection, asked
13 and answered.
14 THE WITNESS: In the 2008 case,
15 no.
16 BY MR. SIMMER:
17 Q. Is it fair to say that had you
18 known that the increase was being driven by Dr.
19 Harper, you would not have approved this
20 threshold increase?
21 MR. LAVELLE: Object to form.
22 THE WITNESS: Yeah. I don't
23 understand what you're asking. It
24 appears to be very speculative.

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1 BY MR. SIMMER:
2 Q. So you're saying if you had known
3 that Dr. Harper's pain clinic that was driving
4 this increase in prescriptions from 30 --
5 pharmacy 3151, you would have done nothing at
6 all?
7 MR. LAVELLE: Object to form.
8 THE WITNESS: If I would have
9 known that Dr. Harper was prescribing for
10 illegitimate medical purposes, then no.
11 And that was driving the increases, then
12 no, I would not have approved the
13 increase.
14 But your question was simply if
15 it was Dr. Clinic's -- Harper's clinic
16 prescribing them, would you have approved
17 the increase.
18 BY MR. SIMMER:
19 Q. So you are agreeing with me that
20 if you had known that Dr. Harper was prescribing
21 for illegitimate medical purposes, that you would
22 not have approved this threshold increase.
23 Right?
24 MR. LAVELLE: Object to form.

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1 THE WITNESS: If I would have
2 known that the increase was due to
3 illegitimate prescriptions, I would not
4 have approved the increase.
5 BY MR. SIMMER:
6 Q. Can you pull back Exhibit 5,
7 please. We looked at it earlier today. I think
8 that was --
9 MR. LAVELLE: Here. I can help
10 you.
11 THE WITNESS: Okay. How do I
12 know what's what?
13 MR. LAVELLE: Each of these has a
14 number on it, so we just have to look for
15 Exhibit 5.
16 5 is this document.
17 THE WITNESS: Okay.
18 MR. LAVELLE: Get these other
19 ones out of your way.
20 BY MR. SIMMER:
21 Q. When you testified with regard to
22 questions I asked you about Exhibit 5, you
23 referred to the system in this exhibit as the
24 inventory replenishment system.

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1 Do you remember that?

2 A. I believe I referred to it as

3 more than just that. I think the explanation was

4 more extensive, proprietary system that includes

5 replenishment and dispensing. I have to go back

6 and look, but I think my answer was a little more

7 expansive than you're --

8 Q. Well, I'm just trying to clarify,

9 just the inventory replenishment system sometimes

10 is referred to as the auto replenishment system.

11 Am I right?

12 A. That is correct, yes. Yes.

13 Q. And am I right that this is part

14 of the system that Rite Aid uses to monitor

15 diversion. Right?

16 A. I would say yes. It is one of

17 the systems that could detect potential

18 diversion, yes.

19 Q. And I'm also right that this is a

20 system that's part of Rite Aid's efforts to

21 monitor for suspicious orders. Right?

22 A. Again, as I've said multiple

23 times throughout, my understanding of suspicious

24 orders is that that's a distribution center

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1 thing. And I've clarified several times that,

2 you know, my understanding of suspicious order

3 monitoring is relative to distribution centers.

4 I think I've clarified that a couple times.

5 Q. I'm just trying to get a clear

6 record here.

7 The auto replenishment system, or

8 what you I think referred to as the inventory

9 replenishment system, that's one of the things

10 that Rite Aid uses to monitor suspicious orders;

11 is that right?

12 A. I think you're changing monitor

13 for diversion to monitor for suspicious orders.

14 I think you're switching those words up in your

15 various questions.

16 As it states here, these are

17 tools to monitor controlled substance purchases

18 relative to diversion.

19 Q. And just to get a clear record,

20 and I apologize if I'm asking a question that you

21 feel you've answered.

22 But you're saying that it had --

23 as far as you know, it did not have any part in

24 the company's efforts to monitor for suspicious

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1 orders. Right?

2 MR. LAVELLE: Object to form.

3 Objection, asked and answered.

4 THE WITNESS: I don't know the

5 answer to that.

6 BY MR. SIMMER:

7 Q. Hand you what we've marked as

8 Palmer Exhibit 19.

9 - - -

10 (Deposition Exhibit No. Rite

11 Aid-Palmer-19, Email chain, top one dated

12 2011-01-17, Bates stamped

13 Rite_Aid_OMDL_0050633, was marked for

14 identification.)

15 - - -

16 BY MR. SIMMER:

17 Q. I'll identify for the record as a

18 one-page document, Rite_Aid_OMDL_0050633.

19 A. Okay.

20 Q. The two emails here, the first

21 one from Janet Hart to a group of individuals

22 dated January 17, 2011.

23 And you see your name there?

24 A. Yes.

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1 Q. And the subject line is

2 "Suspicious Monitoring."

3 Do you see that?

4 A. Yes.

5 Q. And the other individuals, Maggie

6 Perritt, Kevin Mitchell and Janet Hart, she

7 copied herself on this email.

8 Do you see that?

9 A. Yes.

10 Q. And she says, "Can we make the

11 meeting 10:30? I have a meeting at the capitol

12 at 9."

13 Do you see that?

14 A. Yes.

15 Q. This is -- all this was in this

16 email.

17 And do you have any idea what

18 this is in reference to?

19 A. Not based on this alone.

20 Q. Okay. Any idea what -- if there

21 was an effort of some kind to have meetings to

22 discuss suspicious monitoring?

23 A. I don't -- I don't recall.

24 Q. So you left loss -- or strike

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1 that.
 2 You left the loss prevention
 3 department in April of 2011; is that right?
 4 A. That's correct.
 5 Q. Who replaced you in that
 6 position?
 7 A. Sophia Novack, but her name was
 8 not Sophia Novack at that time.
 9 Q. It was Sophia Lai, L-A-I. Right?
 10 A. Yes.
 11 Q. Did she begin immediately after
 12 you left the position?
 13 A. No.
 14 Q. Was there a period of time when
 15 the position was vacant?
 16 A. Yes.
 17 Q. So who continued then to fulfill
 18 the functions that you had been in terms of the
 19 approval of threshold requests, threshold
 20 increase requests?
 21 A. I don't recall.
 22 Q. No one?
 23 A. I don't know that the answer is
 24 no one. I mean, at some point, I know -- like I

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1 think Janet Hart does these today. But off
 2 memory from seven years ago during a time when I
 3 was transitioning into a new role and before
 4 Sophia came there, I don't recall.
 5 Q. Did you do anything during
 6 that -- the interval while the position was
 7 vacant to continue any of your responsibilities
 8 as you had been in loss prevention?
 9 A. I would say -- I would say yes.
 10 The team -- as an example, the team that reported
 11 to me in that group would sometimes come down to
 12 my new office and ask for, you know, help,
 13 assistance, guidance. So it -- you know,
 14 certainly to some degree, yes. Still helping out
 15 in that role, still being involved to -- I just
 16 don't recall if specifically how we handled the
 17 gap with regards to that specific item.
 18 Q. So you were physically located in
 19 a different office; is that right?
 20 A. Yes, yes.
 21 Q. And a different floor location?
 22 A. No. Actually, opposite ends of
 23 the same building.
 24 Q. And you recall that the people

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1 that you had supervised came periodically to ask
 2 you questions; is that right?
 3 A. Yes.
 4 Q. Did Ms. Lai come to you for any
 5 kind of training or assistance in learning her
 6 new job?
 7 MR. LAVELLE: Object to form.
 8 THE WITNESS: Yes. When Ms. Lai
 9 started, I provided her, you know, some
 10 guidance, gave her some tools, introduced
 11 her to the team, things like that.
 12 BY MR. SIMMER:
 13 Q. What kinds of things did you give
 14 her guidance on?
 15 A. Really everything, you know,
 16 relative to the role. So administrative guidance
 17 on, you know, again, the team members and their
 18 strengths. I gave her some -- you know, a number
 19 of different documents, you know, that were
 20 things that we used and told her if she had
 21 questions, you know, after looking them over, to
 22 come see me, I'm down the -- you know, again, her
 23 office was my old office. So encouraged her to,
 24 you know, come down to the other side and ask

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1 those questions.
 2 Q. You said you gave her some tools.
 3 What were those?
 4 A. I don't recall all of them, but
 5 in the course of my role, I had put together, you
 6 know, different decks and, you know, tools and
 7 spreadsheets to, you know, help in the role. And
 8 I provided some of those to her.
 9 Q. Did you train her in the process
 10 to get thresholds increased?
 11 A. I don't recall, but I believe so.
 12 Q. One area that we didn't really
 13 cover sufficiently early on is, as part of your
 14 training over time in loss prevention and
 15 compliance generally, did you get any outside
 16 training from any third parties?
 17 A. Yes.
 18 Q. What third parties?
 19 A. I mean, we're required to have --
 20 I'm required to have continuing education, both
 21 for my licenses and for all those certifications.
 22 So I could not list, you know, for example, every
 23 training program I took for the past 15 years.
 24 Q. Did you attend any third-party

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1 courses or training sessions with regard to
 2 controlled substances?
 3 MR. LAVELLE: Object to form.
 4 THE WITNESS: Can you better
 5 define training program?
 6 BY MR. SIMMER:
 7 Q. Well, I'll give you an
 8 example.
 9 Did you train -- or attend any
 10 Buzzeo conferences?
 11 A. I did not personally attend
 12 Buzzeo conferences that I can recall.
 13 Q. You know what I mean by the
 14 Buzzeo conferences?
 15 A. I do. I am familiar with Buzzeo.
 16 Q. And that Buzzeo offered
 17 conferences and training on controlled
 18 substances?
 19 A. I am familiar with that.
 20 Q. And your testimony is that you
 21 attended none of his conferences?
 22 A. I don't recall attending his
 23 conferences. I may have attended one.
 24 But what I was referring to

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1 earlier with the question clarification on
 2 training was during those regulatory road shows,
 3 for example, Janet would sometimes have a
 4 representative from the DEA come out to actually
 5 present or teach at the road show. So I was
 6 trying to clarify whether that constitutes
 7 training.
 8 Q. Do you remember what individuals
 9 from the DEA came and presented along with you?
 10 A. I do not.
 11 Q. What did they present during
 12 those road shows?
 13 A. I could not -- I would not recall
 14 all of the topics. I recall one where they were
 15 talking about suspected loss forms and 106s.
 16 Q. That's that same kind of a DEA
 17 form we looked at earlier, that the forms are
 18 filled out after a suspected theft or a loss in a
 19 store?
 20 A. Yes.
 21 MR. LAVELLE: Object to form.
 22 BY MR. SIMMER:
 23 Q. Did they give any presentations
 24 on suspicious order monitoring that you recall?

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1 A. Not that I recall.
 2 Q. A little unclear.
 3 You said that you did not recall
 4 attending a Buzzeo conference, but then you said,
 5 I think I may have attended one of the
 6 conferences.
 7 Did I have that right?
 8 A. You do, because I don't
 9 specifically remembering a Buzzeo conference, but
 10 in thinking through it, I don't know what other
 11 way I would know or be familiar with Buzzeo. So
 12 I think it's possible that I may have attended
 13 one. I can't affirmatively state that, but it's
 14 possible.
 15 Q. Any idea what approximate time
 16 frame when you would have attended the Buzzeo
 17 conference?
 18 A. No.
 19 Q. And just for the record, I want
 20 to make sure I'm spelling it correctly and see if
 21 you agree on this.
 22 It's B-U-Z-Z-E-O; is that
 23 correct?
 24 A. I believe that's correct, yes.

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1 Q. Okay. Any other third-party
 2 training on controlled substances that you recall
 3 having received?
 4 A. That's very broad. But, you
 5 know, again, with 15 hours of continuing
 6 education required every single year and being a
 7 practicing pharmacist for 20-some-odd years, I
 8 can almost guarantee you that some of those
 9 continuing education programs had something to do
 10 with controlled substances. That's a very broad
 11 question.
 12 Q. But you have no specific
 13 recollection of what those training courses were?
 14 A. No. I'd have to go back and
 15 look.
 16 Q. Where would you look?
 17 A. At least in recent time frame, I
 18 have some of my continuing education, you know,
 19 that I've taken.
 20 You have to produce those to the
 21 board on a periodic basis, so you have to
 22 maintain your continuing -- much like I'm sure
 23 attorneys have a similar process, I would assume.
 24 Q. You have to produce those to the

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1 Board of Pharmacy?

2 A. You do. It's not so matter much
3 of producing in today's environment. It's all
4 electronic now. So the way it works today is,
5 you know, you take the courses and you register
6 with a system that basically records those
7 courses. And then you -- when you do your
8 licensure examination, you attest to the fact
9 that you've taken the courses. And then if they
10 were to want to look to see if you have completed
11 the requirements, they can actually go out and if
12 they would want to and check that, is my
13 understanding of how it works, but...

14 Q. You mentioned that you were
15 actually licensed in three different states; is
16 that right?

17 A. That's correct.

18 Q. And the procedure you've just
19 described, is that true in all three states?

20 A. All three states require
21 continuing education, yes.

22 Q. So if we wanted to get copies of
23 what it is that you're referencing as the -- I
24 guess, continuing education materials you

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1 provided to these Boards of Pharmacy, do you have
2 copies of what you submitted to each of these
3 three Boards of Pharmacy?

4 MR. LAVELLE: Object to form.

5 THE WITNESS: I would have a list
6 of courses, is potentially what I would
7 have on a, you know, NABP-type website.

8 BY MR. SIMMER:

9 Q. That's the national boards --
10 National Association of Boards of Pharmacy, NABP.
11 Right?

12 A. That's correct.

13 Q. And you have -- I'm not sure what
14 you mean by NABP website.

15 Is that someplace where you
16 submitted this information or what is -- what's
17 the reference to the website?

18 MR. LAVELLE: Object to form.

19 THE WITNESS: NABP, over the past
20 few years, has developed a process where,
21 again, you can -- when you take your
22 continuing education, it can be
23 automatically loaded to an NABP, you
24 know, website. The old process back in

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1 the day was you would take paper courses
2 or you would print out courses and you
3 would have to maintain a stack of your
4 continuing education courses.

5 You know, again, I believe that's
6 very similar to what attorneys have to do
7 with regards to their continuing
8 education.

9 BY MR. SIMMER:

10 Q. During your continuing education
11 courses, you take examinations?

12 A. Yes.

13 Q. And those examinations, any of
14 them include information about controlled
15 substances?

16 A. I don't know the answer to that.

17 Q. So are these records you're
18 talking about that you either submitted through
19 NABP or ones that were the old way that were
20 submitted, I guess, paper courses I think you
21 talked about, is that information that you
22 provided to your counsel?

23 A. Provided to my counsel?

24 Q. The counsel sitting next to you

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1 today.

2 MR. LAVELLE: Object to form.

3 THE WITNESS: No.

4 BY MR. SIMMER:

5 Q. Did they ask you for that
6 information?

7 MR. LAVELLE: Object to form.
8 Direct the witness not to answer on the
9 grounds that it seeks attorney-client
10 communications.

11 MR. SIMMER: I'm going to request
12 that you actually get that information
13 from the witness. We need to determine
14 whether this is information that's
15 relevant to everything he's been talking
16 about about his expertise today. So I'm
17 going to ask that you get copies of that
18 and we can determine whether that's
19 subject to a further inquiry, so...

20 MR. LAVELLE: Mr. Simmer, you can
21 put any requests you have in writing.
22 We'll take a look at it. We'll consider
23 it after the deposition.

24 MR. SIMMER: We can go off the

<p style="text-align: right;">Page 290</p> <p>1 record.</p> <p>2 THE VIDEOGRAPHER: Off the record</p> <p>3 at 4:33 p.m.</p> <p>4 - - -</p> <p>5 (A recess was taken from</p> <p>6 4:33 p.m. to 4:56 p.m.)</p> <p>7 - - -</p> <p>8 THE VIDEOGRAPHER: We're back on</p> <p>9 the record at 4:56 p.m.</p> <p>10 MR. SIMMER: I have no further</p> <p>11 questions.</p> <p>12 I would say that if -- depending</p> <p>13 on what documents are in this continuing</p> <p>14 education production, we may still</p> <p>15 reserve the right to come back and ask</p> <p>16 the witness some additional questions.</p> <p>17 MR. LAVELLE: We're going to go</p> <p>18 off the record briefly while we switch</p> <p>19 places here.</p> <p>20 THE VIDEOGRAPHER: Off the record</p> <p>21 at 4:56 p.m.</p> <p>22 - - -</p> <p>23 (A discussion off the record</p> <p>24 occurred.)</p>	<p style="text-align: right;">Page 292</p> <p>1 A. Page 141?</p> <p>2 Q. Yes.</p> <p>3 A. I have it.</p> <p>4 Q. And it has controlled drug portal</p> <p>5 application on it?</p> <p>6 A. Yes.</p> <p>7 Q. All right. Mr. Palmer, I'd like</p> <p>8 to ask you to just take a look at the section of</p> <p>9 the PowerPoint here of pages 141 through 146 and</p> <p>10 ask you whether you recognize it.</p> <p>11 A. Yes.</p> <p>12 Q. Did you prepare this portion of</p> <p>13 the PowerPoint?</p> <p>14 A. Yes. This looks like my</p> <p>15 PowerPoint.</p> <p>16 Q. Do you recall you were asked</p> <p>17 questions by plaintiff's counsel earlier today</p> <p>18 about this PowerPoint and its use? Do you recall</p> <p>19 being asked about that earlier today?</p> <p>20 A. Yes.</p> <p>21 Q. All right. Do you remember what</p> <p>22 you used the PowerPoint section pages 141 through</p> <p>23 146 for?</p> <p>24 MR. SIMMER: Object to form.</p>
<p style="text-align: right;">Page 291</p> <p>1 - - -</p> <p>2 THE VIDEOGRAPHER: We're back on</p> <p>3 the record at 4:57 p.m.</p> <p>4 - - -</p> <p>5 EXAMINATION</p> <p>6 - - -</p> <p>7 BY MR. LAVELLE:</p> <p>8 Q. Good afternoon, Mr. Palmer. This</p> <p>9 is John Lavelle representing Rite Aid, and I have</p> <p>10 just a few questions for you.</p> <p>11 I would like to ask you first to</p> <p>12 put in front of yourself what was marked earlier</p> <p>13 today in questioning by counsel for plaintiffs as</p> <p>14 Palmer-4.</p> <p>15 Do you have that in front of you,</p> <p>16 sir?</p> <p>17 A. Exhibit Number 4?</p> <p>18 Q. Yes.</p> <p>19 A. Yes.</p> <p>20 Q. And I'd like to ask you to turn</p> <p>21 to what's numbered page 141. And the Bates</p> <p>22 number is Rite_Aid_OMDL_0033030.</p> <p>23 Just let me know when you have</p> <p>24 that in front of you, sir.</p>	<p style="text-align: right;">Page 293</p> <p>1 THE WITNESS: This would have</p> <p>2 been part of the regulatory road show</p> <p>3 presentations I described earlier, for</p> <p>4 where a multi-functional team presented</p> <p>5 to field leaders on various topics to</p> <p>6 educate, reinforce and elevate their</p> <p>7 knowledge with regards to certain</p> <p>8 compliance-related tools or activities.</p> <p>9 BY MR. LAVELLE:</p> <p>10 Q. So, Mr. Palmer, what is the</p> <p>11 controlled drug portal application that's</p> <p>12 described in this section of the PowerPoint that</p> <p>13 we're talking about?</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 Q. All right. Do you have in front</p> <p>23 of you the portion of the PowerPoint that's at</p> <p>24 page 142, which is Rite_Aid_OMDL_003031?</p>

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1 A. Yes.

2 Q. All right. Could you just read

3 for the members of the jury who are viewing this

4 video what you have written here on this page?

5 A. Yes.

6 MR. SIMMER: Object to form.

7 THE WITNESS: Yes.

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 BY MR. LAVELLE:

17 Q. And was that accurate at the time

18 you prepared this PowerPoint?

19 MR. SIMMER: Object to form.

20 THE WITNESS: Yes.

21 BY MR. LAVELLE:

22 Q. Let's turn to the next page,

23 please.

24 At the top of this page, it says,

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1 "Above Average Report"; is that right?

2 A. Yes.

3 Q. Do you remember mentioning in

4 your testimony earlier today the Above Average

5 report?

6 A. Yes.

7 Q. What was the Above Average

8 report?

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Q. What time frame was this Above

18 Average report available?

19 MR. SIMMER: Object to form.

20 THE WITNESS: By time frame, do

21 you mean how long there was an Above

22 Average report or specifically this

23 version of the portal?

24 BY MR. LAVELLE:

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1 Q. Let me ask it this way.

2 When did you first learn that

3 there was something called an Above Average

4 report?

5 A. Oh, when I was a pharmacist or a

6 pharmacy district manager working for Rite Aid,

7 there was a more manual version of the Above

8 Average report back as far as I know.

9 Q. Okay. What do you have written

10 on page 143 of the PowerPoint about the Above

11 Average report?

12 MR. SIMMER: Object to form.

13 Strike -- object to form.

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 BY MR. LAVELLE:

18 Q. And what did you mean when you

19 wrote that?

20 A. That's a description of how the

21 Above Average portal works. It's basically

22 looking at, you know, [REDACTED]

23 [REDACTED]

24 Q. Let's turn now to the next page

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1 of the PowerPoint, page 144, Bates number

2 Rite_Aid_OMDL_0033033.

3 Do you have that in front of you,

4 sir?

5 A. Yes.

6 Q. All right. And it has a

7 subcaption of "Store Detail Information."

8 Do you see that?

9 A. Yes.

10 Q. What do you have written with the

11 arrows pointing to a particular portion of this

12 page?

13 That's a bad question. Let me

14 rephrase it.

15 What do you have written in red

16 here on page 144 with the arrows?

17 [REDACTED]

18 [REDACTED]

19 Q. Can you explain to us what that

20 means?

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

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1 [REDACTED]
 2 [REDACTED]
 3 Q. Is what is shown on this screen
 4 here, on this PowerPoint, a screenshot from the
 5 Above Average report?
 6 MR. SIMMER: Object to form.
 7 THE WITNESS: Yes.
 8 BY MR. LAVELLE:
 9 Q. Let's turn to the next page of
 10 this PowerPoint, page 145, Rite_Aid_OMDL_0033034.
 11 Do you have that in front of you?
 12 A. Yes.
 13 Q. And it has a subcaption under
 14 "Above Average Report" of "Exception Detail."
 15 Do you see that?
 16 A. Yes.
 17 Q. Can you explain to the members of
 18 the jury who are viewing this video what is on
 19 this page of the PowerPoint?
 20 A. This would be what a pharmacy
 21 district manager would see when they drill into
 22 the -- one of their exceptions is they would see
 23 this screen.
 24 So the -- a previous screen is

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1 sort of the summary level screen. And if they
 2 were to click on this, that would take them to
 3 this detail screen, providing detail relative to
 4 the exception.
 5 Q. There's a section of this page
 6 that has a heading that says, "Information
 7 Worksheet."
 8 Am I reading that correctly?
 9 A. Yes.
 10 Q. What is listed under that section
 11 of this page?
 12 A. A number of choices for the
 13 pharmacy district manager to select, and in some
 14 cases, input additional information or populate
 15 additional drop-downs.
 16 Q. And what was the PDM, or pharmacy
 17 district manager, supposed to do with this Above
 18 Average report?
 19 A. The pharmacy district manager
 20 should look into this -- the issue, the
 21 exception, and try and make a determination, for
 22 example, if there is a drug loss, what stage that
 23 loss is in, you know, is it an active
 24 investigation, was there a loss identified, is

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1 there no loss and everything is appropriate, in
 2 which case they need to populate the on-hand
 3 appropriate quantity. And also there's an
 4 opportunity over to the right for them to add
 5 notes into this.
 6 Q. Were exceptions a potential
 7 indicator of diversion?
 8 MR. SIMMER: Object to form.
 9 THE WITNESS: Exceptions could be
 10 an indicator of drug diversion.
 11 BY MR. LAVELLE:
 12 Q. Let's turn to the next page, 146,
 13 which I think is the last page of this section of
 14 the PowerPoint.
 15 Can you explain to us what you
 16 have here on this page under "Email
 17 Notifications"?
 18 A. Yes.
 19 So as part of this iteration of
 20 the Above Average report, there was a process
 21 built to drive automated emails out, alerting
 22 field leaders really to the status of their
 23 responses to their exceptions.
 24 So, you know, at the 11th of the

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1 month, there was an email that went out -- I
 2 believe these populated on the 10th of every
 3 month. So on the 11th an automated email went
 4 out to pharmacy district managers saying, hey,
 5 your exceptions are out there.
 6 And then on the 30th of the
 7 month, if they haven't done them, there was an
 8 email that said, hey, you have not yet looked at
 9 these and responded.
 10 The 5th of the following month,
 11 that email went a level up. It went to the
 12 regional vice presidents saying they still have
 13 not been reviewed or responded to.
 14 And then on the 10th of the
 15 following month, if they still hadn't responded,
 16 that notification went higher up to the SVPs, to
 17 corporate.
 18 And at the 16th, at that point,
 19 the exceptions are overdue, so there was an email
 20 providing a list of overdue expectations.
 21 Q. All right. Mr. Palmer, I'd like
 22 to ask you to put in front of yourself the
 23 document that was earlier marked as Palmer
 24 Exhibit 5.

<p style="text-align: right;">Page 302</p> <p>1 A. I have it.</p> <p>2 Q. And you recall being asked</p> <p>3 questions about this document earlier today by</p> <p>4 counsel for plaintiff?</p> <p>5 A. Yes.</p> <p>6 Q. Turn to the second page of this</p> <p>7 document, please. It's Rite_Aid_OMDL_0046595.</p> <p>8 Do you have that in front of you?</p> <p>9 A. Yes.</p> <p>10 Q. Take a look at the first bullet</p> <p>11 point, the second sentence.</p> <p>12 Would you just read that out loud</p> <p>13 for the members of the jury, please.</p> <p>14 A. "Exceptions are generated for</p> <p>15 field review and response monthly."</p> <p>16 Q. Can you tell us whether that --</p> <p>17 what you just read is consistent with the Above</p> <p>18 Average report, as described in that PowerPoint</p> <p>19 we were just looking at?</p> <p>20 MR. SIMMER: Object to form.</p> <p>21 THE WITNESS: It is consistent</p> <p>22 with the Above Average report.</p> <p>23 MR. LAVELLE: All right. I'd</p> <p>24 like to mark an exhibit.</p>	<p style="text-align: right;">Page 304</p> <p>1 together for field teams, specifically the loss</p> <p>2 prevention, district managers and regional</p> <p>3 managers on a specific case, but really designed</p> <p>4 to help educate them on, you know, how to -- to</p> <p>5 properly conduct these sorts of investigations.</p> <p>6 Q. Is this a PowerPoint that you</p> <p>7 used in presentations?</p> <p>8 MR. SIMMER: Object to form.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MR. LAVELLE:</p> <p>11 Q. To whom did you make those</p> <p>12 presentations?</p> <p>13 A. To the loss prevention teams.</p> <p>14 Q. And why did you make this</p> <p>15 presentation to the loss prevention teams?</p> <p>16 A. Because it illustrates the best</p> <p>17 practices and how a well done or well executed</p> <p>18 pharmacy loss prevention case is conducted.</p> <p>19 Q. Are you familiar with the facts</p> <p>20 in the case that is described in this document?</p> <p>21 MR. SIMMER: Object to form.</p> <p>22 THE WITNESS: I am familiar.</p> <p>23 BY MR. LAVELLE:</p> <p>24 Q. How are you familiar with those</p>
<p style="text-align: right;">Page 303</p> <p>1 We're up to 20; is that right?</p> <p>2 COURT REPORTER: Yes.</p> <p>3 - - -</p> <p>4 (Deposition Exhibit No. Rite</p> <p>5 Aid-Palmer-20, PowerPoint, "Anatomy of a</p> <p>6 Pharmacy Case Presented by Director</p> <p>7 Pharmacy Loss Prevention Andy Palmer,"</p> <p>8 Bates stamped Rite_Aid_OMDL_0037816</p> <p>9 through Rite_Aid_OMDL_0037851, was marked</p> <p>10 for identification.)</p> <p>11 - - -</p> <p>12 BY MR. LAVELLE:</p> <p>13 Q. Mr. Palmer, we've put in front of</p> <p>14 you what we've labeled for identification as</p> <p>15 Exhibit Palmer-20. Please take a look at that</p> <p>16 and let me know when you're ready to ask --</p> <p>17 answer some questions about it.</p> <p>18 A. Yeah, I'm ready.</p> <p>19 Q. Okay. Mr. Palmer, do you</p> <p>20 recognize the document we've marked for</p> <p>21 identification as Palmer-20?</p> <p>22 A. Yes.</p> <p>23 Q. What is it?</p> <p>24 A. This was a presentation I put</p>	<p style="text-align: right;">Page 305</p> <p>1 facts?</p> <p>2 A. Again, from putting together and</p> <p>3 presenting on this presentation.</p> <p>4 Q. All right. Let's turn to the</p> <p>5 second page of the PowerPoint.</p> <p>6 Can you read for the members of</p> <p>7 the jury what you have on this page?</p> <p>8 A. The store, store 1924 in Akron,</p> <p>9 Ohio, a date range, and then some of the involved</p> <p>10 parties, LPM Brian Stimmel, PDM Patty Mendenhall,</p> <p>11 division 2 data miner Cathy Krug and a graphic of</p> <p>12 the state of Ohio.</p> <p>13 Q. So the date range you have here,</p> <p>14 when was this investigation conducted?</p> <p>15 A. This investigation was conducted</p> <p>16 in 2007.</p> <p>17 Q. How did this investigation start?</p> <p>18 A. The next page of the</p> <p>19 presentation, "Phase 1 -- Initial Detection,"</p> <p>20 indicates that "Data miner Cathy Krug comes</p> <p>21 across store 1924 during a routine review of</p> <p>22 Division 2 NaviScript KPI's." And "The data</p> <p>23 indicates possible inventory issues at this</p> <p>24 location involving controlled substances."</p>

<p style="text-align: right;">Page 306</p> <p>1 Q. Turn to the next page, I think is 2 the fourth page of this PowerPoint, Bates 3 Rite_Aid_OMDL_0037819. 4 Do you have that in front of you? 5 A. Yes. 6 Q. And it says, "Naviscript Data - 7 1924." 8 A. Yes. 9 Q. What is on this page? 10 A. The first bullet is one of our 11 key performance indicators, "Cycle count down 12 HT," which stands for high theft, "- CS," which 13 stands for controlled substances, "% cycle count 14 down," and then in red a percent, "37.93%." 15 Next bullet, "5th highest in 16 division." 17 Next bullet, "2nd highest in 18 region." 19 Fourth bullet, another KPI, "DC 20 orders adjusted quantity HT-CS % DC Orders 21 adjusted," again in red a percentage, "17.95%." 22 And the following bullets are 23 similar, 19th highest in division, fourth highest 24 in region.</p>	<p style="text-align: right;">Page 308</p> <p>1 would be further research done to try and 2 determine if those KPIs are indicative of actual 3 losses. 4 Q. If you can turn to the page of 5 the PowerPoint -- it's at Rite_Aid_OMDL_0037624 6 (sic). It's captioned "Phase 2 -- Detailed 7 Research." 8 A. Uh-huh. 9 Q. You need to answer audibly, yes, 10 no, I don't know. 11 A. Yes. 12 Q. Okay. 13 MR. SIMMER: John, what page are 14 you on again? 15 MR. LAVELLE: It's 16 Rite_Aid_OMDL_0037824. 17 BY MR. LAVELLE: 18 Q. Do you have that in front of you, 19 Mr. Palmer? 20 A. Yes. 21 Q. So what is the detailed research 22 that is described on this page of your 23 PowerPoint? 24 A. So "Cathy," the data miner,</p>
<p style="text-align: right;">Page 307</p> <p>1 Q. Then you have two pages of what 2 appear to be screenshots from a computer; is that 3 right? 4 MR. SIMMER: Object to form. 5 THE WITNESS: These are 6 screenshots from the Navi -- Navi system. 7 BY MR. LAVELLE: 8 Q. And what do these show? 9 A. They show the same data 10 referenced on the same -- previous page. So, for 11 example, 1924 is highlighted in black. And the 12 37.93 percent has a red arrow going to it. And 13 the KPI is cycle count down HT-CS, as indicated 14 in yellow up in the upper right. 15 And the corresponding next page 16 similarly has store 1924 highlighted in black, 17 the arrow pointing to the aforementioned 18 17.95 percent. And the KPI referenced up above, 19 DC orders adjust HT-CS. 20 Q. All right. Once this is 21 identified, what happened next in the 22 investigation? 23 A. So once Cathy Krug identifies 24 these, you know, sort of initial flags, there</p>	<p style="text-align: right;">Page 309</p> <p>1 "utilizes filtering and sorting functionalities 2 within NaviScript to research the" aforementioned 3 "cycle counts and DC order adjustments in greater 4 detail." 5 And then the next bullet 6 indicates that "A pattern indicates particular 7 drugs as issues and a particular ID being 8 associated with" those particular activities. 9 Q. What do you mean by that, a 10 particular ID associated with the majority of the 11 activity? 12 A. Within our system, when actions 13 are taken within the system, those events are 14 logged and the ID, meaning -- everyone that uses 15 the system has a unique assigned user ID. That 16 ID basically tells you who performed a particular 17 activity. And that's what that's referring to. 18 Q. Right. If you could turn to the 19 following page of this PowerPoint, it's 20 Rite_Aid_OMDL_0037825. 21 Are you able to find on that page 22 the particular ID that's associated with the 23 majority of the activity that was referenced on 24 that previous page of the PowerPoint?</p>

<p style="text-align: right;">Page 310</p> <p>1 MR. SIMMER: Object to form.</p> <p>2 THE WITNESS: Yeah. That would</p> <p>3 be under the "User" column. And the ID</p> <p>4 is RXPHFK.</p> <p>5 BY MR. LAVELLE:</p> <p>6 Q. What does that ID tell you about</p> <p>7 the identity of the user?</p> <p>8 A. Well, the RXP indicates they're a</p> <p>9 pharmacist. So RXP is the prefix of a</p> <p>10 pharmacist. And the HFK, in the general</p> <p>11 convention for assigning IDs, represents the</p> <p>12 individual -- the initials of the user. So this</p> <p>13 is a pharmacist with initials HFK.</p> <p>14 Q. Do you know who that pharmacist</p> <p>15 is?</p> <p>16 A. In this particular case, that was</p> <p>17 a Henry or Hank Kusik (ph), I believe.</p> <p>18 Q. What happened next in this</p> <p>19 investigation?</p> <p>20 A. Once we were able to narrow down</p> <p>21 to a pattern involving particular drugs and a</p> <p>22 particular user ID, which is what these next few</p> <p>23 pages show, the next step was detailed research</p> <p>24 by Cathy, the data miner, to try and determine as</p>	<p style="text-align: right;">Page 312</p> <p>1 information regarding the potential losses and</p> <p>2 the ID associated with the concerning activities.</p> <p>3 The case also provides instruction to the LPM to</p> <p>4 work with the PDM to request DUR, which stands</p> <p>5 for drug utilization reports, from Janet Hart.</p> <p>6 Q. And what is going to be done with</p> <p>7 those drug utilization review reports?</p> <p>8 A. Drug utilization review reports</p> <p>9 are used to determine if you have losses and the</p> <p>10 exact amount of those losses. It's part of a</p> <p>11 reconciliation process.</p> <p>12 Q. All right. Let's move on to</p> <p>13 phase 4 of the investigation, as described in</p> <p>14 this PowerPoint.</p> <p>15 What happened in phase 4 of the</p> <p>16 investigation?</p> <p>17 A. Phase 4, in phase 4, the DUR</p> <p>18 reports were ordered from Janet for a period of</p> <p>19 May 1, 2006 to May 1, 2007, after review and</p> <p>20 discussion of the case. May 1 is the time of</p> <p>21 year when we do our annual controlled substance</p> <p>22 counts. So you have a known count at a given</p> <p>23 point in time. Another known count at another</p> <p>24 given point in time. And the DUR reports from</p>
<p style="text-align: right;">Page 311</p> <p>1 to the best of her ability using data from the</p> <p>2 replenishment system, as well as Navi, what</p> <p>3 exactly might be missing and the quantity that</p> <p>4 might be missing.</p> <p>5 Q. Is that what's described in phase</p> <p>6 3 under Bates number Rite_Aid_OMDL_0037831?</p> <p>7 MR. SIMMER: Object to form.</p> <p>8 THE WITNESS: That's described in</p> <p>9 phase 2, OMDL_0037829 and OMDOL_0037830</p> <p>10 (sic).</p> <p>11 BY MR. LAVELLE:</p> <p>12 Q. Okay. Thank you.</p> <p>13 A. The spreadsheet.</p> <p>14 Q. Thank you. Sorry for the</p> <p>15 confusion.</p> <p>16 All right. Let's go to phase 3</p> <p>17 of your investigation as described in this</p> <p>18 PowerPoint.</p> <p>19 What happened during phase 3?</p> <p>20 A. So in phase 3, Cathy opens up a</p> <p>21 case in the case management system, which was</p> <p>22 NaviCase at that time, for store 1924, based upon</p> <p>23 the research and also notifies loss prevention</p> <p>24 manager Stimmel. The case provides detailed</p>	<p style="text-align: right;">Page 313</p> <p>1 Janet detailing all the ins and outs in between,</p> <p>2 which would enable them to determine if drugs are</p> <p>3 missing and how much.</p> <p>4 Q. Was it possible to confirm losses</p> <p>5 from the review of the DUR reports and the</p> <p>6 reconciliations?</p> <p>7 MR. SIMMER: Object to form.</p> <p>8 THE WITNESS: Absolutely.</p> <p>9 BY MR. LAVELLE:</p> <p>10 Q. And that's -- is that described</p> <p>11 in this PowerPoint anywhere?</p> <p>12 MR. SIMMER: Object to form.</p> <p>13 THE WITNESS: The reconciliation</p> <p>14 process itself isn't described in this</p> <p>15 presentation, but I think, you know, what</p> <p>16 I've described is the process. You take</p> <p>17 the starting point count and you put all</p> <p>18 the ins -- ins and outs in there, and</p> <p>19 then that gives you the ending count you</p> <p>20 should have. And then you compare that</p> <p>21 to what is actually on the shelf at that</p> <p>22 point in time. And the difference is the</p> <p>23 drugs that you're missing.</p> <p>24 BY MR. LAVELLE:</p>

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1 Q. All right. So at this point of
2 the investigation, you've confirmed losses; is
3 that right?

4 MR. SIMMER: Object to form.

5 THE WITNESS: At this point in
6 the investigation, losses have been
7 confirmed.

8 BY MR. LAVELLE:

9 Q. Are authorities notified at this
10 point?

11 MR. SIMMER: Object to form.

12 THE WITNESS: So at the point
13 that losses are confirmed, then, yes, a
14 number of authorities would be informed
15 at this point.

16 BY MR. LAVELLE:

17 Q. And who is informed? Which
18 authorities?

19 A. A suspected loss form would be
20 filed with the DEA, and also the state Board of
21 Pharmacy would be notified.

22 MR. SIMMER: Object.

23 BY MR. LAVELLE:

24 Q. All right. And is that what

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1 have any -- the bottles with medication were
2 missing. It was also noted that all three were
3 for the same patient and the same drug.

4 Q. All right. Was there an effort
5 made to use video surveillance to assist in this
6 investigation?

7 MR. SIMMER: Object to form.

8 THE WITNESS: Yes.

9 BY MR. LAVELLE:

10 Q. And what was done in using video
11 surveillance?

12 A. So in this case, once -- the
13 general process is once the covert counts
14 determine losses, would be to pull the video and
15 examine the video, looking for concealment on
16 video. In this case, LPM Stimmel pulls the video
17 and the video does not show any concealment but
18 does show some suspicious behavior from the very
19 pharmacist whose IDs were associated with the
20 activities.

21 The behavior included the RPH
22 removing will-call bags hidden under checkout and
23 placing pharmacy containers into a pharmacy bag,
24 but yet placing the paperwork into will-call.

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1 happened here, the DEA -- was the DEA notified?

2 A. On the -- yes. On the next page,
3 "5/28/2007 -- Suspected loss form submitted by
4 PDM."

5 And then the fourth bullet down,
6 "State board notified for cooperative effort."

7 Q. What happened next in this
8 investigation, after notifying the DEA and the
9 state board?

10 A. Well, that same slide indicates
11 that the camera -- cameras' locations were looked
12 at. And it was determined that six cameras were
13 in existence covering most of the pharmacy.
14 Also, covert counts were being conducted
15 pre-opening every day by the LPM and the PDM.

16 Q. All right. What happens next in
17 this investigation?

18 A. So the pre-opening counts, which
19 were done with the state board agent present,
20 indicated an additional loss of 54 hydrocodone
21 APAP5/500 occurred since the 28th. In addition,
22 a review of will call revealed three prescription
23 vials with product missing from the bottles. The
24 paperwork was present, but the bottles did not

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1 Q. All right. What happens next?

2 A. So LPM Stimmel and PDM Mendenhall
3 learned that the suspect is close friends with
4 the patient whose prescriptions were being
5 tampered with. They also learned that this
6 patient may have a history of drug abuse.

7 LPM Stimmel also contacted
8 director of pharmacy loss prevention Andy Palmer
9 with a request to review the patient profile
10 associated with the activity. Palmer grants that
11 permission as being pursuant to an active
12 investigation. A review of the profiles reveal
13 that the suspect's friend is on all of the same
14 medications that happen to be missing from this
15 location.

16 MR. SIMMER: I'll note for the
17 record the witness is simply just reading
18 from the slide and not actually
19 testifying at this point.

20 BY MR. LAVELLE:

21 Q. Mr. Palmer, what happened next in
22 the investigation?

23 A. Additional cameras were added to
24 try and better capture the activity within the

<p style="text-align: right;">Page 318</p> <p>1 will call area and by the pharmacy door and also 2 get a view of the hydrocodone. So additional 3 cameras were added. 4 Q. And you describe that in your 5 PowerPoint here? 6 A. Yes. 7 Q. And that's on the page that's 8 Bates stamped Rite_Aid_OMDL_0037840? 9 A. That's correct. 10 MR. SIMMER: Object to form. 11 BY MR. LAVELLE: 12 Q. All right. Turn, please, to 13 Rite_Aid_OMDL_0037842. 14 Do you see that? 15 A. Yes. 16 Q. All right. And what's described 17 on this page of the "Phase 4 - Investigation" 18 PowerPoint? 19 A. The continuing process to take 20 pre-opening covert counts. And that those 21 pre-opening covert counts continue to reveal 22 additional losses. 23 Q. At some point, does this 24 investigation find any evidence on video of</p>	<p style="text-align: right;">Page 320</p> <p>1 the explanation of how the CCT footage, 2 you know, enabled us to see this very, 3 very suspect activity involving printing 4 out the monographs and the labels. 5 BY MR. LAVELLE: 6 Q. Did the team provide this 7 additional information to the state board? 8 MR. SIMMER: Object to form. 9 THE WITNESS: Yes. 10 BY MR. LAVELLE: 11 Q. And what happened as a result of 12 providing that information to the state board? 13 A. We work very closely with the 14 state board, especially in Ohio. And in this 15 case, as in, you know, in general in our 16 investigations and especially in Ohio, it's a 17 cooperative effort between the state board and 18 the Rite Aid investigator in regards to, again, 19 the entire investigative process, including 20 ultimately the interview process. 21 Q. Turn to Rite_Aid_OMDL_0037848. 22 It's the slide that is captioned "Phase 5 - 23 Resolution." 24 Do you have that in front of you,</p>
<p style="text-align: right;">Page 319</p> <p>1 activity by the pharmacist? 2 MR. SIMMER: Object to form. 3 THE WITNESS: Yes. The 4 suspicious activity was identified on 5 video. And what it really revealed was 6 that the suspect was utilizing a very 7 unique methodology to divert the drug 8 products. 9 BY MR. LAVELLE: 10 Q. And what was that unique 11 methodology? 12 A. Basically printing out labels 13 from existing filled prescriptions and then 14 basically taking those -- those bottles, which 15 were really nothing more than documents related 16 to a previous dispensing, and basically setting 17 those aside. And then when his suspect 18 accomplice came in, effectively handing those 19 products off. 20 Q. Is that described in this 21 PowerPoint at Rite_Aid_OMDL_0037844? 22 A. Yes. That -- 23 MR. SIMMER: Object to form. 24 THE WITNESS: Yes. That provides</p>	<p style="text-align: right;">Page 321</p> <p>1 Mr. Palmer? 2 A. Yes. 3 Q. What happened in terms of the 4 resolution of this investigation? 5 A. The interview occurred. And 6 again, that was done with both our investigator 7 and the state board agent present. When 8 confronted with the evidence, there was an 9 admission obtained to the theft of controlled 10 substances by printing extra labels on his 11 accomplice's medication and then filling in 12 labeling those with drugs and then handing them 13 off. A statement was signed. A civil demand 14 report was issued. And the suspect was removed 15 from the location, terminated and an arrest 16 warrant was issued. 17 Q. Was all of this reported to the 18 DEA as well? 19 MR. SIMMER: Object to form. 20 THE WITNESS: All of the losses 21 would have been reported to the DEA on a 22 Form 106 form submitted by Janet Hart to 23 the DEA. 24 BY MR. LAVELLE:</p>

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1 Q. And if you turn to
2 Rite_Aid_OMDL_0037849.
3 Do you have that in front of you?
4 A. Yes.
5 Q. "Phase 6 - Final Documentation."
6 A. Yes.
7 Q. What do you have written there in
8 the first bullet point?
9 A. "A Form 106 is prepared by the
10 PDM, approved by Janet Hart and submitted to the
11 DEA as loss due to employee theft."
12 Q. So --
13 MR. SIMMER: I note for the
14 record the witness just read this. I'm
15 not sure that's testimony, so...
16 BY MR. LAVELLE:
17 Q. All right. Is that what
18 happened? Is that an accurate description of
19 what happened?
20 A. It is an accurate description.
21 Q. We've just reviewed a detailed
22 PowerPoint that you presented.
23 Is everything that we just went
24 over accurate to the best of your knowledge and

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1 recollection?
2 A. Yes.
3 Q. And why did you prepare and
4 present this PowerPoint to people at Rite Aid?
5 MR. SIMMER: Objection, asked and
6 answered.
7 THE WITNESS: I think it
8 represented a sort of textbook execution
9 of a loss investigation that could have
10 been a very difficult loss prevention
11 investigation due to the very unique
12 methodology that ultimately the
13 individual utilized to steal these drugs.
14 And, you know, the idea really was to
15 take this very well done pharmacy loss
16 investigation and use it to help other
17 loss prevention managers understand,
18 this -- this is how you do this. This is
19 how it's done.
20 MR. LAVELLE: Thank you, Mr.
21 Palmer. No further questions.
22 THE VIDEOGRAPHER: Off the record
23 at 5:33 p.m.
24 - - -

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1 (A recess was taken from
2 5:33 p.m. to 5:44 p.m.)
3 - - -
4 THE VIDEOGRAPHER: We're back on
5 the record at 5:44 p.m.
6 - - -
7 EXAMINATION
8 - - -
9 BY MR. SIMMER:
10 Q. Sir, you were asked some
11 questions a moment ago about -- I think this is
12 Exhibit 4, the very large document. And you were
13 asked questions about Rite_Aid_OMDL0033034. This
14 is the Above Average report.
15 A. I'm there.
16 Q. And you talked about how there
17 was -- this report is used to identify
18 exceptions. Right?
19 A. Yes.
20 Q. Is there anything in the
21 exceptions that are listed here that would have
22 identified suspicious orders?
23 A. Again, I think it goes to the
24 definition of suspicious order. In cases -- in

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1 certain cases, this could identify theft or
2 losses. And those orders, relative to the
3 diversion, you know -- it could detect diversion.
4 Let's put it that way.
5 Q. If -- and by diversion, what
6 you're referring to is potential theft. Right?
7 A. Yes.
8 Q. Anything beyond theft this Above
9 Average report really couldn't identify.
10 Isn't that right?
11 MR. LAVELLE: Object to form.
12 THE WITNESS: Can you give an
13 example?
14 BY MR. SIMMER:
15 Q. Inappropriate prescribing. It
16 doesn't identify anything about that, does it?
17 A. This would not identify that.
18 Q. So the Dr. Harper situation we
19 talked about earlier today, the Above Average
20 report wouldn't help anybody identify that
21 situation, would it?
22 MR. LAVELLE: Object to form.
23 THE WITNESS: No, I don't believe
24 so.

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1 BY MR. SIMMER:

2 Q. Could we pull up then Exhibit 20
3 that you were just asked some questions about.

4 Now, the whole subject matter of
5 what you're talking about here, this is a, what
6 you would say, a pharmacy case.

7 This, as we -- I think you went
8 through with counsel just a moment ago, this
9 involved a theft from one of your pharmacies.
10 Right?

11 A. Yes.

12 Q. And in doing that investigation
13 about theft from one of your pharmacies, the
14 investigators would have had access to
15 prescribing data. Right?

16 A. Can you clarify what you mean by
17 prescribing data?

18 Q. So they would have looked at the
19 prescriptions that would have been filled in this
20 pharmacy. Right?

21 A. Not necessarily.

22 Q. They don't review the prescribing
23 data at all?

24 A. You're speaking relative to this

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1 case, and I think we walked through this case
2 extremely thoroughly. I don't see any reference
3 or no -- nor do I see any relevance to -- the
4 individual was stealing drugs through the process
5 described here.

6 Q. Could you look at 373839, please.

7 A. I think you mean 37839, is that
8 what you mean?

9 Q. Yes. 37839.

10 MR. LAVELLE: 37839.

11 THE WITNESS: Yes.

12 BY MR. SIMMER:

13 Q. You see in the middle of the
14 page -- and this is a slide you created. Right?

15 A. Yes.

16 Q. Do you see right in the middle of
17 the page where you say, "LPM Stimmel contacts
18 Director" of "Pharmacy LP Andy Palmer"?

19 That's you. Right?

20 A. Yes.

21 Q. It says, "With a request to
22 review the patient profiles associated with
23 activity."

24 Do you see that?

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1 A. Yes.

2 Q. What other information would be
3 included in a patient profile other than the
4 prescriptions that had been filled for that
5 particular patient?

6 A. The patient profile would have a
7 number of different pieces of information, drug,
8 drug name, quantity, refill number, original
9 prescription, refill number, prescriber name.
10 All those kinds of things.

11 Q. And that's prescribing data, is
12 it not?

13 MR. LAVELLE: Object to form.

14 THE WITNESS: It is prescribing
15 data, but it's not relevant to this
16 particular investigation.

17 BY MR. SIMMER:

18 Q. It says that you gave access to
19 this patient's profile. And you just went over
20 what kind of information is in the profile, and
21 that included the prescribing data, did it not?

22 A. It also includes a whole bunch of
23 other things that -- when you're conducting an
24 investigation and when you're requesting, you

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1 know, something like a patient profile, you're
2 requesting it specifically to look at specific
3 things. There are probably other pieces of
4 information in there, too.

5 If you think that information is
6 relevant to this particular investigation, I'd be
7 interested to know why.

8 Q. These are your words you put on
9 this page. Right?

10 A. Yes. The patient profile.

11 Q. The patient profile.

12 And I think you just said it
13 includes the prescribing data. Right?

14 A. It would include the name of the
15 prescriber. Correct.

16 Q. And you talked about the names of
17 the drugs. Right?

18 A. Yes. Names of the medication.

19 Q. The package size. Right?

20 A. Refill number, package size.

21 Q. Dosage?

22 A. Dosage form, yes. All kinds of
23 information.

24 Q. So all that prescribing data is

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1 at the investigator's fingertips in conducting
2 this information. Right?
3 MR. LAVELLE: Object to form.
4 BY MR. SIMMER:
5 Q. Strike that.
6 All of that prescribing data is
7 at this investigator's fingertips in conducting
8 this investigation. Right?
9 MR. LAVELLE: Object to form.
10 THE WITNESS: The information
11 that is included in the requested patient
12 profiles would be available to the
13 investigator.
14 BY MR. SIMMER:
15 Q. So the subject of this
16 investigation was, again, a theft, was it not?
17 MR. LAVELLE: Objection, asked
18 and answered.
19 THE WITNESS: Yes.
20 BY MR. SIMMER:
21 Q. We had a situation of a product
22 loss involving a Rite Aid employee. Right?
23 A. Yes.
24 Q. Nothing about this investigation

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1 identified any red flags of diversion other than
2 the theft. Right?
3 MR. LAVELLE: Object to form.
4 THE WITNESS: The diversion
5 detected was theft.
6 BY MR. SIMMER:
7 Q. Did this investigation identify
8 any inappropriate prescribing, for example?
9 A. That was not the purpose of the
10 investigation, nor would it identify that.
11 Q. There's no way for the company to
12 identify using the tools you just went through,
13 is there?
14 MR. LAVELLE: Object to form.
15 THE WITNESS: I don't know --
16 when you refer to tools, I assume you're
17 referring to, you know, NaviScript in a
18 more totalitarian perspective, as opposed
19 to the specific KPIs referenced here.
20 BY MR. SIMMER:
21 Q. So the KPIs that we talked
22 about -- and I even asked you questions about
23 that in the prior examination. I said, are those
24 KPIs, could they be used to identify

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1 inappropriate prescribing? Do you remember we
2 talked about that earlier?
3 A. The KPIs involved here would not
4 be used to identify inappropriate prescribing.
5 That's correct.
6 Q. Could they be used to identify
7 suspicious orders?
8 A. Again, when it comes to
9 suspicious orders, as we've talked about before,
10 I'm not clear on what your definition of
11 suspicious order is. It's my understanding it's
12 more related to the distribution centers.
13 However, certainly these order adjustments, which
14 is part of ordering, and these cycle count down,
15 which is part of ordering, ultimately could be
16 and were indicative of diversion. So I would say
17 diversion, yes.
18 Q. Diversion, if you define it as
19 only theft of drugs by a Rite Aid employee.
20 Right?
21 MR. LAVELLE: Object to form.
22 THE WITNESS: Well, in this case,
23 I would point out that there also was an
24 external individual involved in this

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1 particular theft or fraud, scam, so...
2 BY MR. SIMMER:
3 Q. Would this kind of investigation
4 have identified the kind of inappropriate
5 prescribing that Dr. Adolph Harper was engaged
6 in, for example?
7 A. This type of investigation would
8 not.
9 Q. Okay. Could you turn to Bates
10 37820, please.
11 A. Uh-huh. Yes.
12 Q. And just tell us generally, what
13 is the information that's on this particular
14 slide?
15 MR. LAVELLE: Object to form.
16 THE WITNESS: 7820. Right?
17 BY MR. SIMMER:
18 Q. Yes, sir.
19 A. This is a screenshot from the
20 Navi product sorted -- looks like in this case
21 sorted by division and filtered, ranking the
22 cycle count down adjustments on a percentage
23 basis for the locations in the division.
24 Q. Okay. Do you know if there was

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1 an investigation done of store 4436?
 2 A. There would have been additional
 3 analysis done by Cathy on the other stores that
 4 are above store 1924, yes.

5 Q. You know that for a fact, that
 6 she did in fact analyze store 4436. Right?

7 MR. LAVELLE: Object to form.

8 THE WITNESS: I cannot say that I
 9 know for a fact, but that would be part
 10 of the data miner's job and process. It
 11 wouldn't be a good data miner activity to
 12 somehow or other pick, you know, a store
 13 number 6 on the list and not
 14 correspondingly also do that additional
 15 detail research into the stores ranked
 16 higher.

17 BY MR. SIMMER:

18 Q. What about stores that show up on
 19 this report generally, would they all be ones the
 20 data miner would look at as well?

21 A. I would note that this is the
 22 entire division. So this is -- this is -- the
 23 screenshot is cut off, but, you know, a typical
 24 division would have -- division 2 at that time

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1 might have well over a thousand stores.

2 So the data miners, you know,
 3 would look at the stores that had the higher
 4 number of exceptions and then drill down into
 5 those for more detail.

6 Q. Okay. Take a look down the list
 7 and there's a pharmacy that we talked about
 8 earlier today.

9 You see 3151?

10 A. Yes.

11 Q. Do you know whether your data
 12 miner would have done an investigation of
 13 pharmacy 3151?

14 MR. LAVELLE: Object to form.

15 THE WITNESS: I think you mean
 16 would the data miner have done any more
 17 detailed analysis?

18 BY MR. SIMMER:

19 Q. Yes, sir.

20 A. Okay. I do not.

21 Q. So out of this whole haystack,
 22 they picked 1924 to do a further investigation.
 23 Right?

24 MR. LAVELLE: Object to form.

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1 THE WITNESS: What you don't know
 2 here is, again, what she saw in the
 3 detail. For example, these are
 4 percentages. Okay? So, for example,
 5 store 4436 may have had one cycle count
 6 down. You know, you have to go a little
 7 bit further into these things. It's not
 8 telling you how many counts down. It's
 9 not telling you whether there were
 10 offsetting counts up.

11 So as a data miner, what this
 12 screen is sort of demonstrating is here's
 13 a starting point. You know, and each of
 14 the data miners, you know, approached
 15 these things, you know, with their -- a
 16 little bit of their own flair or flavor.
 17 So I can't speak to exactly what Cathy
 18 Krug's approach is in her data mining
 19 back in 2007, but she certainly would
 20 have also drilled into the stores above
 21 1924.

22 BY MR. SIMMER:

23 Q. And would this investigation have
 24 identified a situation like the Dr. Harper

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1 situation, inappropriate prescribing that we
 2 talked about earlier today?

3 A. This type of investigation would
 4 not identify that.

5 MR. SIMMER: No further
 6 questions.

7 MR. LAVELLE: Nothing further
 8 based on that redirect.

9 The witness reserves -- I'm
 10 sorry, the witness reserves the right to
 11 read and sign.

12 THE VIDEOGRAPHER: This concludes
 13 today's deposition. The time is
 14 5:58 p.m. We are off the record.

15 (Witness excused.)

16 (Deposition concluded at
 17 approximately 5:58 p.m.)

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